THE THREE STAGES IN THE EVOLUTION OF THE LAW OF NATIONS

BY

C. VAN VOLLENHOVEN

PROFESSOR OF LAW IN THE UNIVERSITY OF LEYDEN, HOLLAND

THE HAGUE
MARTINUS NIJHOFF
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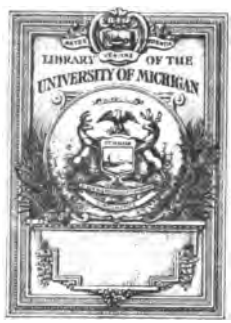

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EDITOR'S NOTE.

It should be borne in mind that the present pages were written during the summer of 1918. The author being requested by the Dutch government to accompany their Minister to the United States, had to leave the supervision of this translation to others who have not felt entitled to alter the text on all such points as may betray its having been written before last autumn, confiding that the main purpose of the book has lost none of its force by the course of subsequent events.

STAGE THE FIRST.

If a book which is meant for contemporaries and deals with present day affairs, opens with a historical disquisition, carrying us back a couple of centuries, the reader is apt to be suspicious. What could such an introduction be, but the draped curtain of a vestibule, a dusty portière, put up merely because it belongs there, according to an upholsterer's notions? We pass by it or under it as quickly as possible and only then reach our destination.

However, this mode of proceeding is to be deprecated when dealing with the law of nations. For this law boasts of a special legend concerning its birth, a legend indeed, of which the scene lies in the romantic days of the Rebellion of the Netherlands against Spain, of Elizabeth and Henry IV of Navarre, of the Pilgrim Fathers and the kings of the House of Vasa. We must clear up this perfectly incredible legend itself at the outset, to avoid constantly entering into conflict with the facts of later centuries, down to the present day.

Now this is more easily said than done, for to draw a satisfactory picture of the period in which the Law of Nations was born, taxes our imagination considerably. At present France, England, Holland and even Russia and Prussia are such respectable old gentlemen that it is difficult to think of them as hobbledehoys, as young fellows. And yet they were hardly more than

that at the time — if they existed at all. There was one greybeard among them: Austria, the Holy Roman Empire. But respect for its venerable medieval beard and for its venerable medieval pretensions vanished but too soon with the Middle Ages themselves. Portugal and Spain were a trifle older than the rest of the tribe; they had headed the file of new states and in the second half of the sixteenth century were already of age. The rest, considered as consolidated, self-conscious states, were mere striplings. But no sooner have the states of Modern History made their appearance when they begin to dabble in international law and to talk about it. With them it meant something totally different from the vaguely defined laws for all Christian states, which greybeard Austria, ensconced in his elbow-chair recalled with complacency and which found their most clearly marked expression in a duty to jointly protect Christendom from Saracen or Turk when the pope or the emperor summoned them. With such a conception of Christendom, claiming obedience from all alike, the new youth will have nothing to do. The law of Nations of which they speak is a set of regulations for independent, perhaps pugnacious and certainly rather undisciplined boys who feel themselves their own masters. They lay down the rules regulating their intercourse, their mischief, their angling expeditions, their fights. Shortly after the Pacification of Ghent, in 1576, by which all the provinces of the Low Countries bound themselves to resist the tyranny

of Spain, the Dutch States General appeal more than once to a right recognized by all neighbouring states, „le droict de voisinage"; the hazardous blockade of 1599 to starve the Spaniards is legal, as the proclamation of April 2nd. says, not only according to Roman Law, but also according to „the common Law of Nations"; in the records of Queen Elizabeth's reign we repeatedly find problems of International Law about envoys, trade monopoly, fishery; in connection with the „Twelve Years' Truce" during the war of Holland with Spain, questions concerning the Law of Nations crop up, with regard to navigation to and from the East Indies. In the seventeenth century Holland and England are repeatedly at loggerheads — in 1661 even on two points simultaneously, — in which appeal is made to the Law of Nations in matters of monolopy, shore-rights and the like; as late as 1752 principles of the Law of Nations are brought to bear upon the affair of the Silesian public debt, in 1756 upon the rights of neutrals to sail to and from the colonies of a belligerent state. In the long list of treaties, from 1648 till 1763, famous in universal history, the Law of Nations may be rarely mentioned or not mentioned at all, still the growth of the relations with which International Law is concerned, keeps pace with the growth of modern states.

However, the student who should forget in considering this growth that we are dealing with a Law of Nations conceived by boys in their teens and should

expect to meet with advanced views, would find himself rudely undeceived. Can he imagine — after all the incessant warring, all the murderous devastation, all the revolting disorganisation and dislocation — that this Law of Nations can plan or execute measures for the peace and safety of Europe? It effects nothing at all in that respect. One may as well look for snow in the dog-days, as for endeavour to promote international order in the Law of Nations during the 16th and 17th centuries. And hardly anyone requires it, for that matter. Most princes and governments — they may be called Maurice of Orange or the Great Elector, Cromwell or Charles the Twelfth — have but one object: to secure paramount power for their country, to make and keep their country so strong as to be safe from the attacks of others. If they succeed in this, either alone or allied with other powers, they become, indeed, for the greater part, a danger for the weaker nations at once; but the Law of Nations is not concerned with that. Hence it is possible for a sprightly-minded author like Hübner to write as late as 1759 that the Law of Nations of his day consists for seven eighths of rules concerning ceremonial; it is for this reason that this Law of Nations offered no remedy at all when Louis the Fourteenth in years of absolute peace impresses foreign merchantmen with crew and all for trading in the service of France, without any compensation; and hence it is that all this Law of Nations in practice amounts to nothing but the right

of the strongest — people going to war for every trifle. The politician knows that and is resigned. The states of the period have to learn the art of living side by side and mutually to adapt themselves; it is all they can do as yet. Modern Law of Nations presupposes fixed boundaries, but at that time boundaries were for ever changing: towns like Bois-le-Duc and Maestricht, the strip of land between Flanders and France, the country of Lorraine clearly prove this. This continual warfare is not pleasant to be sure; it is not calculated to promote tranquillity; it is not cheap; but it was (there being then neither conscription nor standing army) a much lighter burden than in our age, and life at the court of Frederick Henry of Orange shows that even during a war it was then possible to forget its calamities. Even the scanty number of politicians of those times who aimed at the welfare of Europe: Oxenstierna, De Witt, William the Third — do not in their letters lament that the Law of Nations is being broken or depreciated, but that plighted faith is not kept; that brotherly love and the duties of a Christian are slighted; that treaties concluded before „Almighty God" and „The Holy Trinity" are violated in the rudest way and on the slightest provocation. When surveying the accumulation of rules, fragmentary and unsystematic, dull and scanty, casual and unfixed; rules dealing with elegant details, but leaving the main concern of war and destruction untouched, the first stage in the evolution of International law (reckoned rough

ly from 1570—1770) can hardly be considered edifying.

And yet, however curious it may seem: this first stage has never provoked any resentment. Why not? Because it never pretended to greater excellence than it possessed; because people knew what it was worth. It was unlovely, pitiable, characterless; but it was honest. Its contents is perhaps most accurately summed up, among a good deal of musty university erudition, on the one hand in two clever, practical books (1650, 1657) by an Oxford professor and London practitioner Zoucheus (Zouch) — one about law and arbitration between states, the second about dealing with ambassadors' delicts; on the other hand in the admirable, crisp writings (1702, 1721, 1737) by Bynkershoek, one time president of the High Court of Holland and Zealand. This primitive Law of Nations is not got up with ermine, a wig, powder or paste trinkets and it had the pluck to stand its ground in this simple apparel for two hundred years, down to the last quarter of the eighteenth century.

The reader who has kindly attended to me while I was briefly passing sentence upon Primitive Law of Nations will, no doubt, be considerably taken aback. Not a word about Grotius! Do we not hear and read everywhere that modern Law of Nations is the offspring of Grotius's book of 1625 „On the laws of War and Peace"; that the prisoner of Loevestein was father and creator of the Law of Nations; that his ideas, incompletely understood, perhaps, at first, after a few

decades already conquered all Europe? Does not Professor Oppenheim of Cambridge, England, one of the rare writers on the Law of Nations of independent and critical mind, write as late as 1912 that one cannot, indeed, ascertain how Grotius's book became authoritative, but nevertheless can prove that towards the end of the seventeenth century the States of Europe considered themselves bound by the Law of Nations, of which a considerable part had been laid down by Grotius? And does not the herd of common copyists writing about the subject presume to formulate the matter even more boldly, saying that owing to the influence of the book of 1625 we suddenly see about the year 1648 a new system of Law of Nations emerging and acknowledged too, of which Grotius is the generator?

It would be insipid to say that this legend concerning the birth of International Law is mere fancy and plagiarism, in flat defiance of historical fact. It would be vapid to say, that hardly any trait in primitive Law of Nations is found in Grotius, and, inversely, nothing essential out of Grotius passed into the primitive Law of Nations. For the hard fact remains that not only was his victory over primitive International Law never gained, but that it must be perfectly obvious to any one who knows how Grotius came by this doctrine and what he intended to effect by it, that it could not possibly have been gained at all.

GROTIUS'S DOCTRINE OF DUTIES.

One is apt to form too idyllic a conception of labour such as that of Grotius. The student pictures him as the child, predestined while yet in the cradle to become an apostle of peace; he thinks of the man whose life was devoted, without a break, to the Law of Nations and of individuals; a creative genius whose illustrious works were adorned with such names as „Via ad Pacem" or „Votum pro Pace" (1642).

Alack, how one is disappointed! How much more prosaic the hard reality of facts must have been. The two titles refer to peace among religious sects; they have to be supplemented with the words „ecclesiasticam" and „ecclesiastica". The devotion of a lifetime was but moderate. His predestined career was realized in that matter-of-fact way, which is called „a fluke".

Grotius had not left Leyden University long, when as a young lawyer at the Hague, a lawyer who disliked his profession, but was passionately fond of the classic authors and of theology — he was confronted with the state-as-a-criminal, the state-poltroon, the state without a conscience. That state was called Portugal. Portugal behaved far worse towards us than our principal enemy Spain itself; Spain which since 1580 had subjugated Portugal, but had left it an independent government. Hanging, torturing, mutilating, betraying, deceiving that was what Portugal did to our

navigators whenever it could. Its behaviour towards the native princes in South-east Asia uprooted for years with Eastern nations all trust in the good faith of western peoples. But the wrong it did to our republic itself, embodied there in its chartered and „Honourable" East India Company is a series of veritable crimes of one state towards another. The Company, it is true, does not bear all this meekly — those Zealanders and Hollanders were not the sort of men for that. The Portuguese rabble get a thrashing, are thrust aside, good faith is re-established with the Eastern Princes and in the mean time some fat pray is occasionally wrenched from these Portuguese wretches.

Now it is just the novelty of such fat prey in 1603 and 1604 which raises the question with the Admiralty of Amsterdan and in Holland generally, in the first place, if such booty is legal in the opinion of lawyers and secondly if it can be reconciled to the conscience of a Christian. On this head Grotius is moved to write in Latin — probably at the request of others; at that time the republic itself is twenty-five years old; the Company two years, Grotius twenty-one years. Well, then, this is what proved decisive for all his labour in the field of the Law of Nations: that in 1604 he did not, as a lawyer, acquiesce in the fact that the primitive Law of Nations is silent about such things, that the Law of Nations of Elizabeth, of Philip of Spain and Maurice of Orange did not provide statutes for such villainy as that of the Portuguese — but that on the contraryhe

brought all his erudition, strength, knowledge and enthusiasm to bear and scraped together all his legal and theological arguments to prove that Portugal even according to established law is an infamous criminal, that even according to established law this state deserves exemplary punishment; that the plaintiff may inflict such punishment and secure booty on account; that even in the interest of society at large such state-crime may not be passed by and that even unconcerned nations may not look on unmoved, but are bound, at least, to judge exactly as the Seven Provinces, whose rights had been violated.

And when Grotius has written this elaborate and enthusiastic defence, called „On the right of Capture" and has witnessed its success in Holland, does he, then, devote the sequel of his young life to the propagation of his earnest conviction? By no means! He quietly returns to theology and the classic authors and the duties of his profession; and he absolutely forgets his doctrine of the Law of Nations. That Holland forgets it too, can meet with no reproof; for his treatise, with the exception of one celebrated, but very small fragment („Mare liberum" 1609) was not even printed; it was accidentally discovered in 1864 at a booksale in the Hague, bought for the University of Leyden and presented to the surprised world in a carefully prepared edition. Without his imprisonment in Loevestein and his exile in France, that is, without his enforced retirement from office (from his five-and-thir-

tieth till his fifty-second year) Grotius would never again have troubled to revert to the Right of Nations doctrine of his youth.

We tell all this with so much emphasis; but is Grotius's insight in state-crime really something so very extraordinary? Have you, reader, and myself not said the same things when Germany in 1898 snatched a strip of littoral territory from China and made its colony of Kiaochow of it; when England in 1899 forced its abomimable war on the Transvaal; when one fine day in 1911, Italy went and robbed Turkey of Tripoli? And from our armchair we have said the same, day by day, about the crimes of and in the present war. The ancient Fathers of the Church said the same already in their convincing Latin; and if one could ask the herd of copyists who scribble about the Law of Nations, they would cry in one voice: you will find the same in our writings.

No, gentlemen, you never said anything of the sort. You said, indeed, that this, that and the other was wrong or illegal; you did say that honesty is the best policy; you did write paltry speeches about the good of friendly settlement of disputes. But the doctrine which Grotius as a beardless youth ventures to advocate is this: that the crime of a state is as bad as the crime of a citizen; that a penal code for states is as natural and as indispensable as a penal code for citizens; that every country may help to punish the culprit and that no country may oppose any measures to

punish him; that countries not concerned in the dispute, are bound to distinguish between the country which inflicts the punishment and the country which undergoes it; that they may grant accommodation to the former which they should refuse to the latter. The salient point of 1604 is this: that a state too may be a „praedo" or a „latro", robber or bandit. And that, in this case, it may and should be treated accordingly by the Law of Nations. In which of the later authors do we find all this expressed with equal warmth of feeling, pleaded as fervently, thought out as fully?

After this comes the interval of his imprisonment at The Hague, and in Loevestein (1618—1621); the famous escape; his residence in a country-house near Senlis (1621) and at Paris. When he has thus lived in France for more than two years, in 1623 and 1624, Grotius resumes his work in connection with the Law of Nations; his Law of Nations to which he has not troubled to revert for twenty years. And what strikes us at once? Grotius has grown in worldly wisdom. The youth of twenty-one is now a man of forty. In the German lands the brutal licence of the Thirty Years' War has broken loose; the military policy of Maurice of Orange has triumphed over Barneveldt's policy of peace and the Eighty Years' War between the Netherlands and Spain has been resumed; in France Richelieu is on the point of becoming a minister and his war with the house of Hapsburg looms ahead menacingly.

In spite of this Grotius in his new Latin book ot 1625 does not take back a single word of his former opinions; he does not deviate a hair's breadth from the road he marked out when a boy of twenty-one.

On the contrary.

In 1604 he fastened on one series of crimes — those committed by Portugal — and pleaded in the interests of one state — his own Republic, to wit; in 1625 he draws up a full list of crimes, of which a state may be guilty, committed by and on whomsoever, with all state punishments and all manners of executing them. The right of making war, not the right to conclude peace is first mentioned in the title of his book; and this right of making war (he is never weary of repeating it) stands or falls with the right and the duty to grapple with state crime and state injustice as much as with crime and injustice of citizens. The lawful war, according to Grotius is that which is meant for punishment and with namby-pamby wars he will have nothing to do (although war should always be conducted on principles of humanity); in such a war literally everything ought to be allowed that may be required to get the upper hand of the criminal nation.

Between 1604 an 1625 there is but one salient difference. Twenty years of silence have taught Grotius that the monstrous policy of egotism and striving for paramount power may to-day be found in state A, perhaps, but was in state B fifty years ago; and will be found in state C in another fifty years; that not in

any wise Portugal alone and Portugal always is the criminal state: any nation in the days of its power is a thief or the accomplice of a thief. How, then, does Grotius proceed? He scrupulously avoids any indication which might be construed as partiality for the „Entente" or „Central-European States" of *his* time, and by which he might lose his authoritative claims as an objective philosopher. He borrows his examples from the Bible and classical antiquity; examples which at times so strikingly resemble what his seventeenth century has to show that those powers to which they applied, no doubt, drew their conclusions. At the same time it was possible for the author in this way to avoid the mortification and perhaps injustice of a direct exposure. Avoid them, but certainly not out of fear. Though the book of 1625 be politically impartial, self-restrained, devoid of anger and passion, it is uncompromising. A community of states of which each asks „Am I sufficiently strong?" and „How can I augment my power?" is just as impossible to Grotius as a community of lawless citizens would be. Also for states a practical doctrine of duties should obtain, which can and should be as minutely formulated as that which is binding on citizens. Also for states to act up to this doctrine of duties is not a matter of notable integrity and high Christian sentiments, but a question of self-interest appreciable in money and prosperity. The nations of Europe must try to understand this, if they would avoid perishing through their

own curse: „hence it is that I repose my hope in monarchs like thee, Louis the Thirteenth of France, to whom I dedicate this my book — who, however powerful thy Kingdom may be, dost not covet the territories of others, dost not assail by strength of arms what by right belongs to others, dost not attempt to modify the ancient boundaries by violence".

States should not be at liberty to do good or evil, but their actions should be judged by strict rules of what is just or unjust; hostile engagements between states may no longer be a game of war, but a crime crying out for punishment: such is Grotius's most earnest conviction. This is what his whole book, entitled „On the rights of war and peace" aims at. War is mentioned first, but he means war in a new sense. The right to go to war is but the keystone to his doctrine of state duties. It is but the right to muzzle by warfare those who infringe this doctrine of duties. It is the right, by war, to definitely protect the peace of nations. Grotius, then, is a prophet of brotherly love, come — like his divine master — to rain fire on the earth; not to bring peace, but the sword.

Such is the spirit of the book of 1625; such the spirit too of the reprints supervised by the author himself, of 1632, 1642, and, posthumously ,of 1646; nor do we find a different one in the notes appended in 1642 and 1646. And it was this same mental attitude which actuated him, when writing his Latin treatise of 1627 on the truth of the Christian religion — a work of al-

most incredible fame and circulation, to reproach the older and newer Islam with only aiming at augmenting its paramount power: „born in warfare, breathing nothing but warfare, spreading by warfare" (in armis nata, nihil spirat nisi arma, armis propagatur) and to reproach the Laconians with making military efficiency the object of all their institutions (tota ad vim bellicam fuisse directa). During the last twenty years of his life, till his death in 1645, Grotius persisted in judging the greater and minor crimes of states in this same manner: hoping that the states themselves would eventually come to acknowledge that they ought not to commit those crimes and promise they would do so no more in future.

Does this mean that Grotius conceived a new order of things in the political sphere? He does not even dream of such a thing. He stands with both his feet planted on the political facts of his day; he accepts existing relations; he acknowledges the existence of weak states side by side with strong ones and the impotence of the former when opposed by the latter; he does not impose the duty of self- abnegation, which, as history teaches, would come to nothing; he does not propose to sketch a confederation of nations and its code of law, as they ought to be one day, but the existing confederation of nations. Only with difficulty have people succeeded in culling six lines, not more than that, from his book of six hunderd pages in which he gives his imagination the reins and draws the faintest

outline of what, at present, one would call a league of nations. His book does not project or perfect; it merely states what he considers the present duty of all nations, if they would escape their own destruction and that of all Europe. That duty is to avoid crime even if, at a lucky moment, crime should augment their paramount power.

Is it, then, no waste of time to ask what was the opinion of the central politician of those grand days, of Richelieu, about such a book? We understand that Europe has a high opinion of the ruler who in so short a time succeeded in creating and strengthening the position of his native country in home and foreign affairs and in matters pertaining to maritime power and colonization; who is the real founder of France as a great nation. We understand that France remembers his labours with the deepest gratitude. His far-sighted policy directed against the house of Hapsburg greatly benefitted our Dutch Republic. Yet the minister-cardinal does not differ in the least from that number of men striving for paramount power, described by Burke at the end of the eighteenth century as „the great bad men of the old stamp", whose names, comprising Alberoni, Frederick the Great, Talleyrand, Napoleon, Metternich, Bismarck, Disraeli, Joseph Chamberlain, might furnish such a list that Dante's „Inferno" could not contain them all without enlarging the premises.

Richelieu and Grotius have been acquainted, have

met, conversed, corresponded; they were born nearly at the same time and died nearly at the same time; for seven years (1635—1642) Grotius was the envoy of Sweden at Paris (1635—1645) when Richelieu was at the height of his power (1624—1642); he is living near or in Paris when the cardinal is appointed a minister. But the contrast between the two men could hardly be more flagrant. Richelieu, the brilliant representative of a noble, but ambitious people at a time of unbridled international anarchy; Grotius considering his embassy, which in practice is not much of a success, as a mission-station from which he can labour for his creed concerning the Law of Nations. The two men passed each other by; on either side they found but scanty respect for one another; and the cardinal, no doubt, believed not a word of the book of 1625, so pompously dedicated to his royal master, if, indeed, he took the trouble at all to read in it for one hour in his life.

And yet Grotius's doctrine, according to some, was acknowledged as the law of Europe before the end of the century — before the end of the century whose policy was still completely Richelieu's!

According to Grotius, the title of a nation to its territory is as unimpeachable, as the title of a farmer or a merchant to his property within the boundaries of a country; in reality all borderlands (Limburg, Alsace, Poland, Silesia) were regarded by everyone at that time as soil, which was destined to constantly change its master. According to Grotius war to gua-

rantee political balance is injustice whereas in fact this is exactly what constitutes a righteous war in the seventeenth and eighteenth centuries. According to Grotius offensive and defensive alliances necessarily imply injustice and crime and consequently are not permissible; in the actual practice of states in those centuries, however, they are the rule. According to Grotius — who himself was a member of special embassies to France (1598) and England (1613) and later on was a permanent envoy at Paris for ten years — permanent embassies are hurtful to the Law of Nations; the intercourse between nations after 1648 introduces them more and more. Yet the herd of copyists bleats admiringly about this rapid success of Grotius's ideas. According to Grotius the complete behaviour of states among themselves is subject to a comprehensive, consistent set of duties; the primitive Laws of Nations, on the contrary, limits them to some scanty and insignificant ones, without any coherence. Only the argument of 1609 in favour of the open sea and a few lessons of 1625 about the conduct of war, got a grip on the Law of Nations; the rest was relegated to the erudite, Latin world of the universities, divided by a gulf from practical life in his days. If, in addition to this, we consider that the mutual relations of the United Provinces ifself were completely controlled by the Law of Nations and that in the author's own country no use, whatever, was made of this excellent opportunity to realize Grotius's doctrine,

it can hardly be said that the tradition representing Grotius's doctrine as taking hold of his contemporaries increases in probability.

But even a more telling result is obtained by adding a counter-proof to the above demonstration. What new decrees do we find inserted in the Law of Nations about 1625 and about 1770? Regulations regarding maritime warfare, contraband, blockade, right of search, prizes, trade of neutrals, navigation to the colonies in time of war and the like. What of all this can be traced back to Grotius? Nothing. Mostly it is concrete articles of treaties, born of concrete, prosaic needs: sometimes it is a residue of former articles of treaties, which, although extinct, continue to operate in this fashion. They certainly were never borrowed from Grotius. The Netherlands, France and England are again and again confronted by new problems in their dealings with tropical empires and nations; when do they suffer themselves to be guided by Grotius's rules? Never. Opposed to the old cardinal Fleury who, as a true disciple of the school of „paramount power" will not allow the hands of France to be tied, but desires to remain free at all times, we find the policy of our eminent Grand Pensionary Simon van Slingelandt, a native of Dordrecht, like De Witt — a man through whom Holland was to act an honoured part of international disinterestedness for the last time. Van Slingelandt made acquaintance with Grotius's doctrine of duties in his younger days through

professor Vitriarius of Leyden, the famous abridger of Grotius's book; and the Pensionary's wishes are related to those of Grotius in many respects. Nevertheless even he does not refer to Grotius's code, either when in 1728 and 1729 he draws up his three memoranda about a general European peace for the use of the Congress of Soissons or when by the second treaty of Vienna (1731) he, at last, finds his painstaking policy crowned with success.

Must we conclude, then, that Grotius wrote only for the bookstalls, book-hunters and college lecture-rooms? Has he only influenced the „faith" and not the „works"?

Would it were so. Would he had achieved that. We might have got over that disappointment. On some blessed day some forceful statesman or other would, in that case, have discovered Grotius's doctrine, probed it, honoured it and cleared the way for its recognition.

What happened to Grotius is far worse. The essence of his teaching got buried under a layer of ashes. For a century and a half and longer still people went on reading his works with reverence, studying them, commenting upon them, teaching them, making extracts, but the essence of his argument was lost sight of.

When after 1750 the revived interest in a well-ordered community of nations and a serviceable Right of Nations, generated such sterling and critical writings as those by Hübner, a Dane (1759) and Lam-

predi, a Tuscan (1788) it proved evident that it had become impossible even for them to read Grotius's books with an unbiassed spirit. Those who have the burial of Grotius's ideas on their conscience, are immediately guilty of the stupendous treachery which was committed during the years after 1750 on the first Law of Nations and Grotius's doctrine of duties alike, — and destroyed both of them.

STAGE THE SECOND.

The names of Hübner and Lampredi call up before us that attractive and thrilling period of history in which the French wind begins to blow refreshingly but alarmingly; in which German minds wake up and arise; in which England begins to emancipate itself from the trammels of its hidebound Georges; in which America commences its brisk young life. The states of modern history, now two or three centuries old already, pass through a phase of rejuvenescence; all Europe seems to revive — and also the Law of Nations participates in this renascence.

Even the Law of Nations. The interest taken in problems of the Law of Nations after 1770 is as stirring and active, as it was poor, sleepy and slender before that date — an interest not only in books, but also in the judgments of prize-courts, in diplomatic writings, in treaties. That same residue of cancelled articles of treaties which in a former period already had contributed to form a current opinion on matters concerning the Law of Nations, is now being searched systematically, augmented with a store of what is considered binding law; and men proud of their enlightenment, eagerly imbibe the new learning. Even without this internal change of subject matter, this renascence might perhaps have been a sufficient reason to mark out an other, a second, stage of the

Law of Nations. If at this auspicious moment Grotius's doctrine could have emerged from obscurity, it might possibly have been greeted as a happy revelation, fit for the programme of the „Aufklärung" movement, fraternity and liberty, which is nigh. If ever there was a chance for Grotius, to be heard after Loevestein and Paris, he has that chance now.

If only that single obstacle could be cleared away: his book is no longer understood. His argument is covered up by a layer of ashes.

We of the twentieth century may say so without self-exaltation; for have we not since 1868 had the use of his pamphlet on the right of capture to make his meaning clear to us? A pamplet which only dealt with the crimes of states and which was exclusively levelled at the crimes of states. Those who have read his work of 1604 and next take up the one of 1625, at once discover the same purpose in the larger book, in which state crime is relegated to a subordinate place in a complete whole; they notice at once that the chapter about the punishment of states is the longest of the fifty-six chapters; they observe that the larger book, from its first pages upwards, devotes to no other subject so much care as to the task of characterizing legitimate war as the means to ward off state injustice and state crime especially. It is not only clearly expressed in the volume, it oozes out of all the pores. But the end of the eighteenth century had only the book of 1625 at its disposal; and how

dog-eared, thumb-marked, slaver-soiled it had been left by the universities! It is commonly said: by German universities; but this is not quite fair. Sweden too, led by its German professor Puffendorf took an active part; Leyden also had its share for quite a century from 1658 under Bornius, professor of ethics (not even of law), tutor to the youthful William the Third, till the time of Pestel, a native of Germany. But we can understand that special stress is laid on the *German* universities; for among all the begrimers of Grotius's books, professor Christian Wolf (later on called Wolff; later still Freiherr von Wolff) stands foremost in the period of his life at Marburg and his return to Halle (1724 and after.) What is it these people relish in Grotius's book? It is his natural law; the connection between religion and reason; his theory of criminal law; his interpretation of gospel words. Especially the lesser gods of these schools add new ones to Grotius's wealth of classical quotations, to show off their erudition; if the sun is referred to, Hübner mischievously observes, they prove out of Plato that the sun gives light, if man is mentioned, they cite Aristotle to show that man is mortal, if allusion is made to a triangle, they cite Euclid to demonstrate it has three angles. In order to be able to understand Christian Wolff's Law of Nations, it is necessary, according to his admirers, to have plodded through seventeen (or even twenty-one) quarto volumes of his writing; volumes containing

nothing but arid speculation, arranged in the mathematical way. In this guise Grotius is reprinted again and again; translations succeed one another; but his spirit has become a stranger. Will the new wind succeed in blowing off that layer of ashes, in laying bare the connection between a righteous war and crimes of states?

At this pregnant moment, at this moment which will have to choose between the prosaic, helpless Primitive Law of Nations and Grotius's sacred doctrine of duties; the most fatal thing occurs that could possibly occur: a deed of treachery.

Whoever takes up Hübner's self-complacent but original book of 1759 about the law of prizes, the book which inaugurates the period of novel interest, will read in the preface that just then, in 1758, a larger book about the Law of Nations in general had appeared, which, he thinks, makes a favourable impression, but which he, as yet, has not found time to read. The name of that volume is : „Le Droit des Gens ou Principes de la Loi Naturelle Appliqués à la Conduite et aux Affaires des Nations et des Souverains" and the author is Monsieur de Vattel, a Swiss and a subject of the Prussian Crown. The contrast between the old book by Grotius and the new one of 1758 is most briefly characterized by the christian names of either author; the Dutchman is called Hugh, a bluff and sturdy name; the other is called Emériс: the name of a ballet-master.

Let me acknowledge at once and without reserve how many advantages Vattel's book has over Grotius's. It is written in French, in pleasantly readable French; it is modern in form, almost without notes, devoid of quotations derived from the classics, the bible and the Fathers; it is brought up to date (one hundred and twenty-five years had elapsed since 1625) and it brings its lessons home to the reader by referring to „la dernière guerre" and other current events. If a man found no other literature in a doctor's waiting- room than Grotius and Vattel, he would close Grotius at once after taking it up but would continue to dip into Vattel.

But there is one great objection to Vattel, an objection which on re-perusal becomes more and more serious, and grows stronger and stronger. If Vattel had said „ I overthrow Grotius; I rend him to pieces; I replace the offspring of his overstrung fancy by wholesome realism", the duel would have been a fair one. But he lavishes compliments on Grotius (though, of course, he rates him lower than monsieur le Baron de Wolff); he adopts his division of subject-matter, his terminology, his maxims; he corrects him in matters of detail, supplements him with respect, criticizes him with velvety consideràtion. For one hundred and sixty years it has been possible to represent Vattel as supporting and restoring Grotius when the latter began to grow somewhat decayed — we well know what such restoration means: in truth he levels him

with the ground. Vattel may possibly have been a good man in the opinion of his relations and domestic servants; but he gave a Judas-kiss to Grotius's system.

Can this be proved?

When confronted by the opposed opinions of Richelieu and Grotius, between the system of „paramount power" which refuses to account for its deeds and desires to go its own way; and the system which arraigns state crimes — Vattel sides with Richelieu; he sides with Richelieu and calls his unbridled arbitrary dealings" sovereignty". With Grotius sovereignty means supreme control of a country's home affairs and a country's internal development — but by no means a licence to commit a crime or some other injustice; for what remains in that case of that Law of Nations which holds the states together? According to Vattel not anybody, whosoever, is entitled to give an opinion as to whether a state may possibly commit a crime or other injustice with the exception of the sovereign state alone. „Il apartient à tout Etat libre et souverain, de juger en sa Conscience, de ce que ses Devoirs exigent de lui, de ce qu'il peut ou ne peut pas faire avec justice. Si les autres entreprennent de le juger, ils donnent atteinte à sa Liberté, ils le blessent dans ses droits les plus précieux."

According to Grotius, the criminal state may be punished by the others. According to Vattel even the

country invaded, foaming at the mouth with anger, may not judge of the assaulter of its territory. „Nous ne sommes point reçus à nous plaindre de lui, comme d'un infracteur du Droit des Gens." How could the learned and discerning Grotius (he elswhere observes) err so much as to ascribe even to a neutral nation a right to judge of the conduct of a sovereign state?

Grotius always acknowledges and regrets that between strong and weak, between large and small nations there exists a painful difference in the matter of securing their right. In Vattel we find the cheap finery of a theoretical equality of all states; for are not all equally sovereign?

With Grotius the right of capture is a subordinate part of his punitory system, admissible only as payment on account of what anon will be due by way of penalty and indemnification; and not a guilder more. With Vattel the right of capture is the right of both belligerents to seize as much as may be possibly obtained and even plunder is notprohibited. Grotius's military law specifies the rules of humane warfare, from which even the rigorous punitory war is not exempt; but he does not demand those from the criminal. Vattel's military law pertains only to war waged for its own sake and refers indiscriminately to both belligerents; he attempts to make warfare, undertaken for egotistical purposes, a little milder and more tractable.

Consequently Vattel enables every state, affirming

its sovereignty, to make war on every other state at all times, without being accountable to anyone, and in that case it finds sedative rules at its disposal. The crucial point of Grotius's doctrine is precisely this: that the question, if a war is criminal, has to be decided by an appeal to the Law of Nations and that it is admissible and requisite to act conformably to that decision, inflicting the punishment without flinching and with the utmost rigour.

In order not to seem too abstruse of all things, allow me to give one modern instance in point. Suppose the British army was making its triumphant way in Flanders and was creeping up south of and behind Zeebrugge. This would represent one shaft of the tongs which might squash Zeebrugge. It would be necessary to move the other shaft across the Dutch province of Zealand. Had England a right to violate our neutrality for that purpose? Even Vattel denies this. But may it declare war upon us, in order to obtain a free hand in Zealand, if its military interests render this desirable? Grotius most emphatically answers in the negative: the Law of Nations would be completely destroyed if an unprovoked and consequently criminal war can be justified by an appeal to the profit that accrues from it. Vattel, on the other hand, replies that the question, if England may force such a war upon us, can only be decided by sovereign Great Britain itself, that if England answers in the affirmative even Holland itself is not entitled to

form an opinion as to the propriety of the decision. If Grotius is the apostle of the *rights* of Nations, per- Law haps the prophet of an ultimate League of Nations, Vattel is the absolute negation of the of Nations and League of Nations both.

And, as though this were not sin enough to Vattel's account, he is moreover and above all things responsible for having rendered the interpretation and elucidation of the Law of Nations inextricable.

Again and again since 1914 pacifists, but also a good many others — have had recourse to books on the Law of Nations in its Second Stage, in order to get to understand the philosophy of war. They get entangled and lost in it; their insight is obscured, the cataract in their eyes is not couched. Why? The fault lies not with the student, but with Vattel's Law of Nations For we can still read in Vattel's pathetic phrases that a state should by no means be guilty of injustice, that it should strictly adhere to the decrees ot the Law of Nations, that it may be called upon for redress of injustice, that there is such a thing as a punitory war — but all is covered by the concealed provision, that it can only be the sovereign state itself which decides, whether it has committed injustice, whether it desires to adhere to the Law of Nations, whether it is answerable or punishable. On account of this provision all the greater and minor rules of the Laws of Nations are only valid during the honeymoon of peace and friendship. On account of

this provision every strong state is at liberty, if the Law of Nations interferes with its interest, to rend it asunder for a moment, to cast it off for a moment, as one casts off a mantle. On account of this provision the siren's song about equality of states, integrity of their territoy, their internal paramountcy, duties of belligerents towards neutrals, even about the validity of a binding general treaty of arbitration between two countries — all this is to be understood in this sense: that any state which is prepared to pay for it by war, can put an end to each of these. For though not verbally, yet indeed, every nation is at liberty to declare war.

The high moral value of Grotius's work, on the other hand, was exactly in the frank straightforwardness of his argument and doctrine.

But the most disheartening fact of all is that Vattel was enormously successful. The man who, as a thinker and a worker, could not hold a candle to Grotius, was so favoured by fortune that the Second Stage of the Law of Nations (from 1770—1914, speaking roughly again) may be safely called after him. This success is evinced even by its commercial aspect. Of Grotius's book there appeared an unbroken succession (fifty in a hundred and forty years) of reprints and translations — for scholars and universities — up to the Leipsic edition of 1758 and the French translations of 1759 and 1768. When in 1758

Vattel was published in London, another edition appeared at Leyden in that very same year, another in 1773 and 1774 at Neufchâtel, another in 1775 at Amsterdam, a German translation, an English one, and yet another English one, the edition of 1820 at Paris, a third English translation published in 1835, 1856, 1863. During one hundred years Vattel is all the rage; Grotius is on the wane, he goes through one more edition only during all these years (1773, Utrecht) and one translation published with the original text (Cambridge 1853).

But does not, then, this wide circulation speak in favour of Vattel and his work?

It does just the contrary. For what is the nature of Vattel's success? The success of a mother who suffers herself to be bullied by her children; of a schoolmaster who abolishes home-tasks, tells stories and gives a holiday; of a cabinet minister who grants and puts down in the Estimates whatever the members of parliament come to ask of him. A bonfire success; but the event was to show what this scribbling would lead to.

Is anyone in doubt as to whether this Law of Nations was relished by the Talleyrands and the Metternichs? By Frederick the Great who considered a prince his state's and his nation's servant to such an extent that he thinks it his duty to tear up treaties which might injure the interests of his people? Here at last is a book — this book of Vattel's — which may

truly pride itself on being an „ouvrage qui conduit à développer les véritables Intérêts des Puissances"; here at last is stuff to serve up with confidence before students, officers and headstrong representatives of the people. Not only does Vattel's Law of Nations, under a dignified appearance, leave the states the greatest freedom possible; not only does he like to say, when dealing with knotty problems „laissons donc" this decision„ à la Conscience des Souverains", but he goes even farther. Let us remember in what period he wrote; from 1740 till 1748 the War of the Austrian Succession raged; from 1756 till 1763 the Seven Years' War. After the peace of Aix-la-Chapelle thirty thousand soldiers were shot or sent to the galleys, because of licentious misconduct and insubordination during the fight, due among other causes to their pitiable treatment. After the battle of Rossbach (1757) the French general himself writes to his own minister: „our troops have plundered, been guilty of ravishing and levying contributions and all horrors imaginable" (commis toutes les horreurs possibles). What does Vattel's book, appearing a year later, say of these things? It says, one cannot sufficiently praise the humane mode of waging war at the present day: „ on ne peut trop louer l'humanité avec laquelle la plupart des Nations de l'Europe font la guerre aujourd'hui." This is exactly the sort of thing which the Frédérics like to hear; after such an explanation Vattel may safely proceed to cite con-

temporary examples, drawn from actual practice, which is precisely what the book of 1625 so scrupulously avoided. But where is Grotius' sacred string? Where is his love for a better and more righteous fate of humanity?

The end *did* show what this scribbling led to. This is the Law of Nations by which the nineteenth and the beginning of the twentieth century were guided. Science, I grant, has done good work here and there for the Law of Nations, especially after a sort of rebellion had broken out, between 1840 and 1860, against the trumpery of many preceding years. A completer uniformity of subject matter was secured; it is more thoroughly thought out; inconsistencies in Vattel's work were weeded out. But copying and always copying was the principal occupation. Vattel's dogma was not unmasked, the unbridled liberty to wage war for the sake of paramount power was not exposed and not renounced; and for truly great causes — for lasting international relations, mutual confidence, disarmament or at least curing the fever of „preparedness", even for adhering to the articles of treaties — the Second Law of Nations was of no avail whatever. It does not even supply a foundation.

Has this never been seen through? Was there never any reaction against it?

The first reaction against Vattel seems undertaken in an especially unfelicitous manner; but it originated

with so great, so honest, so celebrated and high-minded a man — (and this explains the misapprehension among the herd of copyists) that this reaction of Immanuel Kant, the Königsberg professor and philosopher, must needs be mentioned. When Kant — the history of whose life, according to Heine was a nonentity, because he had neither life nor history; the man writing „a style of wrapping paper" — when Kant is seventy-one years old, he writes his famous pamphlet „Towards everlasting Peace" (1795) and when he is seventy-three he writes eight pages about the Law of Nations in his „Metaphysics of Morals", which are almost better calculated still to reveal his conceptions. It is sombre reading. His upright mind is offended by this resplendent Law of Nations, grandiloquent on paper and silent in the cabinets. He lays the blame on all without distinction. Grotius, Puffendorf, Vattel, says he, they are all of a kidney; they are one and all cold comforters (lauter leidige Tröster.) Why? Because — it is clear he completely confounds their work — because, if every sovereign state can do what it pleases, there is no binding law; because in that case each has permanent cause on all sides to tremble for its interests; because every enemy is actuated by egotism and every war is unjust; because it is wicked for one state to judge, punish or coerce another; because even a demand for indemnification on concluding peace is wicked as implying judgment.

But what then? If neither Grotius nor Vattel is sound — what then?

„A confederation of Nations" — do not prick up your ears too soon, reader,—a confederation of nations which may be rescinded at any time, in which all states co-operate in freedom, without judging each other, without coercing each other; and which will remain intact, because nature, creative artist as she is, will, no doubt, reveal to them that by violating anyone's rights, whosoever he be and wheresoever it be, violates the rights of all and consequently even his own. It need hardly be said that this utopian conception of a Confederation of Nations presupposes an amount of wisdom and good will among nations, for which we should look in vain in real life.

It is easy to conceive what was to be the fate of this dream of Kant's .The herd of copyists, though sagaciously acknowledging that it cannot „yet" be completely realized, has now for a hundred and twenty years been applauding it as being superlatively worth reading and incredibly ingenious. And those who are desirous of pointing out that prophetic vision of a Confederation of Nations also in the past, and of making Grotius an advocate of such a confederation on account of those six lines in six hundred pages, in which he casually expresses his idea about the Christian Governments united in council — they put their hands on the back of our heads and triumphantly press our noses on those sentences of Kant's where

as many as three times the very word „Völkerbund, Friedensbund" may be read. Would not even the blind be healed by the process? In this way, then, the history of the world, majestically and irresistibly has been striding for three hundred years towards the Elysium of Nations.

Fortunately the second reaction was less depressing. At first it was identified with Gladstone. It was not directed against particular authors or books; but it restores the spirit of Grotius to a place of honour, the spirit which calls a state crime a crime, wishes it to be cried down by its disgraceful name; refuse to tolerate or cloak it.

Now it appears how strong the hold is which this spirit fortunately still has on men. Gladstone is already seventy years old (1876—1880) when he takes up the gauntlet for Bulgaria which was being scandalously maltreated by Turkey, the scoundrel. After his first campaign there is one moment of hesitation, but then he travels again all about England from south to north, from east to west, everywhere sounding an alarm and preaching protest in packed meeting-halls, against this crime committed by one state on another, everywhere inflaming men's better feelings. When, one grey early morning during that second campaign, driving back home, dead tired, from a London station, he sees all those shutters and blinds still closed, he suddenly revives at the thought

that owing to his sacred call the first thought of the awakening sleepers will be „What about Turkey, the scoundrel and the tortured Bulgarians?"

Gladstone is eighty-six years old (1895) when Turkey begins to wreak its will on Armenia. „Would I were still young" he is reported to have said. Still, in spite of his age, he addresses two evening meetings (Chester 1895 and Liverpool 1896) to brand the criminal state with the iron of his inspired faith. They were the last grand evenings of his life. He dies in May 1898. What training to international thought such a man and such behaviour affords!

In May 1898 Gladstone dies — and in August of that very year the world is pleasantly roused by a kindred but this time direct protest against the Second Law of Nations, as understood up till then. It is a summons of the youthful czar Nicholas — the first circular to sound the governments as to a Peace Conference. The Law of Nations and the good will of the Powers „has not been able to effect that real and lasting peace" which all nations need so much; to look for means to ward off the disaster which at present menaces *all the earth* that is the most serious duty which now forces itself on all states without exception."

When therefore we see Czar Nicholas fall in the deepest disgrace with his people, with Europe, with humanity, to be next murdered like a dog, let us, then, not be one of those who forget that he proposed the First Peace Conference.

REFORM OF THE SECOND LAW OF NATIONS.

We recollect with pleasure the early summer days of 1899, when the representatives of nearly thirty Powers had foregathered at the Hague to attend the Peace Conference. The crack hotels were decorated with the flags of a dozen nations; equipages were continually coming and going across the Park; foreign journalists swarmed all over the town; foreign papers were full of telegrams dated from the Hague; and all the world was asking: will this be a genuine Peace Conference, or only an ordinary conference of diplomats, after all?

The query might have been more happily phrased, but, to say the truth, the conference itself had to face much the same problem. For a hundred and thirty years it had been evident that the Second Law of Nations was a tangle of hypocritical unrighteousness: a doctrine of duties with the duties left out. The books on the subject, while seemingly progressive, were really of a retrograde tendency. Momentous rights were trampled upon, whereas futile articles of treaties were crooned over. This current Second Law of Nations could not help the cause of universal peace at all. So one of two courses of action had to be adopted. The first of these implied return to the primitive Law of Nations. In that case it would be necessary to fix, to amplify and correct the established rules, to codify the acknowledged fragmentary Law of Na-

tions, and, without the slightest pretence to idealism to acquiesce in the existing anarchy of the world. Or one might grapple with this anarchy itself, expose crimes committed by states, deliberate the question, by what sort of organisation or league of nations such crimes might be prevented in future — One might go back to Grotius, in short.

It is hardly doubtful which of these two courses the czar must have meant the Powers to follow. When the Conference had met, and it was feared that even the second, tempered, circular of the czar, of January 1899, might lead to no result, it was thought expedient to secure what little practical benefit might be obtained with certainty, rather than suggest reform of a wider scope, which, in all probability would come to nothing. Hence the famous „codification of fragments of the Law of Nations" became the most important item on the programme. But the czar's first circular had sounded a quite different note; its spirit was as yet undaunted and aimed much higher. „The Conference should bind together in a strong bundle the attempts of all states which seriously strive to make peace triumph over discord". What else can be foreshadowed by this but a League of Nations to realize Grotius's Doctrine of Duties?" „It should make this bond firm by eliciting a unanimous acknowledgment of those principles of law without which there can be no safety among Powers and Nations". What else can this mean but the assertion

that crime committed by a state is indeed what Grotius took it for? Beernaert, the clearsighted Belgian statesman, understood the czar's summons in this sense, witness his words, spoken on the 26th of May 1899: „We are assembled here to find the way to enduring peace".

Was the great work duly prepared? Alas, no! No one at that time had any notion where the difficulty lay in such organizing work and in what way it had to be tackled.

It will be objected, perhaps, that there was such a thing as international arbitration. Ever since 1794 the United States of America had propagated it by setting the example in actual practice. Ever since 1815 and 1816 the Pacifist movement in both Anglo-Saxon countries had advocated it. For more than thirty years at least, it had been the principal item on the Pacifist programme. The czar too had accorded it a place in his second circular. Could and should International Arbitration not be the saviour?

It is a good thing that Grotius was not there to give his opinion. He is exceedingly reserved and exceedingly cool about International Arbitration. The herd of copyists, of course, teach a different thing. To them the six lines in which he advocates convoking a council of Christian Governments, represent a Court of Arbitration in embryo. But his book does not bear out this conception at all. Grotius acknowledges of course that arbitration may be of use in settling disputes

about territory and frontiers; in cases when prerogative and duty collide; in fixing the amount of damages offered in expiation of a punishable offence. But when he is dealing at large with „the Interpretation of Treaties", he is silent about arbitration as an expedient in case of conflicting opinion, which clearly proves, he did not overrate its use even in the above-mentioned instances. How can we account for this? By recollecting that International Arbitration does not really affect the great object of his book, the central idea of his Doctrine of Duties. Violation of another's territory, invasion, the lust of conquest, ruthless sacrifice of another's peace to attain paramount power, these and the like crimes make up Grotius' *bête noire*; these completely undermine the quiet and confidence of nations. What could arbitration effect against these? Who ever heard of a robber, murderer, smuggler, spy who had recourse to arbitration? The strong hand of the police only and a judge's sentence can avail in such cases.

How different Vattel's opinion is! There could be no finer key-stone to his Law of Nations based on sovereignty than this perfectly voluntary arbitration (with its transcendent and blessed results!) to which a sovereign state can never be forced to submit, but to which a prince's conscience delights to lead him — provided, of course, that the interests of his country will allow him.

But here Vattel has overshot his mark, for, in order to curry favour with the admirers of Grotius 's Doctri-

ne of Duties, he extols the use of arbitration even in cases of intentional injustice of which a state may be guilty. He proposes that the Courts of Arbitration will henceforth also be competent to judge of crimes perpetrated by states, provided, of course, those states themselves acknowledge they are crimes and that they may be dealt with by arbitration. Fortunately Vattel has not succeeded in leading his followers astray to such an extent. Common sense sufficed to show that International Arbitration is only calculated to deal with disputes respecting property, with causes in which there is some doubt as to the respective claims of the parties. The United States, born in the age of the Second Law of Nations (1776, 1787) have from the very beginning excluded trials of crimes committed by States from their arbitration policy. This decision was possibly influenced by a theory which sprung up just about that time, according to which the word „crime" can never be used in reference to another state: universitas delinquere non potest.

For the rest it was easy to see in May 1899 that International Arbitration cannot deliver the world from dangers which a nation is accustomed to ward off by falling back upon its army and navy. There had been no lack of crimes perpetrated by states. Dr. Jameson's raid occurred about Christmas 1895. England would not hear of arbitration regarding the one million pound sterling demanded by president Kruger because of moral and intellectual damage. In 1897 Greece „deli-

vered" Crete; in 1898 Germany „leased" Kiao-chow; in 1898 America „delivered" the Philippines; and the Boer War was looming menacingly in the near future. Chamberlain, Wilhelm, Jameson, these men represented the danger against which the czar tried to unite the Powers.

Soon after the Conference had started on its labours, it appeared that it was not inspired by a spirit like Gladstone 's. On the 26th of June 1899 the question, if it was possible to diminish the burden of armament, was discussed. The various speakers acknowledged that this burden crushes prosperity; that it is being increased automatically by rivalry; that it leads to bankruptcy of the national finances; that the compulsory military service it imposes is becoming intolerable. Colonel Von Gross von Schwarzhoff, the German delegate, then made a significant speech. After having pointed out that he did not presume to speak on behalf of other states, he went on to say that Germany's prosperity at any rate was not being crushed by its armament; that Germany did not apprehend the burden would go on increasing, nor did it fear „preparedness" was to end in national bankruptcy. Germany regarded military service with joy and pride, consequently Germany could not — he said — participate in trying to find a cure for the disease whose existence it denied. Nobody will be surprised to hear that in populous Germany a colonel could be found of Herr Von Gross's views, but it remains an enigma

that out of a nation of sixty millions of soul, this colonel of all others should have been singled out for the work at the Conference. Fortunately ex-minister Van Karnebeek, the chief delegate of Holland, rose at once to say courteously but frankly that the views of his delegation were diametrically opposed to those of Germany.

Curiously enough it was evidently not thought desirable (after noting this glaring antithesis) at all events to register the opinions of the overwhelming majority of the Conference, which was on Mr. Van Karnebeek's side. It is clear the Conference was anxious not to be dissolved wil thout having attained tangible results. Therefore it tried to find an expedient, when Russsia hinted at a League of Nations and Germany, on the other hand, adhered to Vattel's doctrines, to reconcile the contrary tendencies. International Arbitration was that expedient. If the Conference had aimed at plain truth, it would have clearly stated that a Court of Arbitration at the Hague, however desirable for the rest, as the first fruit of organisation, however useful in case of minor disputes, leaves the great evil of crimes committed by states absolutely untouched. Exactly the reverse was effected. A very practical and meritorious treaty was draughted, consisting of sixty articles, which left the Sovereign states free in all respects,but copied in the pompous introduction the Czar's words of August 1898, „acknowledging unanimously those principles of right

without which, also among nations and powers safety cannot exist." Vattel's spirit was victorious; not he, but Grotius was banished; the cry of the world's conscience of August 1898 had weakened into a genteel formula.

Only one more attempt was made to realize what little could be realized of Russia's original idea. The French delegation on July 3rd uttered the memorable sentence: „We, states, must try to lay all disputes of the world before the Court of Arbitration at the Hague; we acknowledge any incitement to do so as a duty, un devoir." This duty was duly recorded in the treaty. On July 29th 1899 the Conference was dissolved.

It would, of course, be presumptuous for an outsider, to underrate the difficulties with which the Conference had to contend. Nevertheless it must be owned that the final memorandum, summing up the results of its labours, is completely dominated by Vattel's spirit. One longs to find a prophetic word, reminding of Grotius or Gladstone, if it were only on a single page of the proceedings. But the prophetic word is lacking.

The Conference was dissolved without having so much as touched on its chief task. As early as October the bitter consequences became manifest. In South-Africa a war broke out against which the work of the Conference was powerless; among the British minority who called this war a crime and have persisted in cal

ing it that, in spite of the irritation of other people, was Lloyd George. The Boer-War in its turn had bitter consequences. In the House of Peers Lord Roberts, on his return, kept calling on the nation to be prepared for the approaching war, which was bound to come; for after the nefarious proceedings of Kiao-chow and Pretoria no nation went on trusting its neighbour. The diplomatic endeavours of king Edward were represented on the one side as tending to propagate peace, on the other as the making of a new aggressive alliance. In France, in Germany, even in the United States there was the same fear of war, which had become inevitable; „la Grande Peur" took hold of everyone.

Was there nothing, then, tending to a Reform of the Second Law of Nations?

Such Reform might have been initiated by a significant event: the world-expedition of 1900 against China, to wit. Exasperated by the unlawful taking of Kia-chow in 1898 and similar crimes perpetrated by England, Russia and France on the coast of China in 1898 and 1899, the Chinese formed the national, anti-European organisation of the Boxers in 1899 and 1900 and among others the German envoy at Peking was murdered in June 1900. After that not a single ambassador, not a single European on the staff of any legation was safe any longer. If the Chinese Government had been suffered to connive at such misdeeds a general massacre of Europeans would have been at hand. The French envoy at Peking, Pichon, succeeded

in organizing co-operative action of the legations. Also the Cabinets themselves resolved to act in concert; eleven Powers equipped a fleet under the command of the „world-marshall" Von Waldersee. In August 1900 the international troops entered Peking. In December 1900 the ambassadors formulated their demands in connection with China's „crime". In September 1901 China agreed to pay damages and fines and the expeditionary force was broken up.

Why should this expedition have been mentioned in connection with the Reform of the Second Law of Nations? Because it was undertaken in flat defiance of Vattel's teaching. The discordant element in this affair — and it is no little matter, to be sure — is that China's misconduct was the direct consequence of the much more disgraceful misconduct of four European states. But let us consider the expedition itself. According to Vattel, China, as a sovereign state, is accountable to none and outsiders may not charge it with crime; neither may they punish it. But in this case, the sovereign state is judged, punishment and penance is demanded; and Germany, although a disciple of Vattel, sets the example. According to Vattel coercion by force of arms amounts to war and in that case both parties are on equal footing; in the present instance the eleven Powers do not in the least regard their policing China as „war", in as much as they invite Belgium to join, which country by reason of its neutrality acts of 1831 and 1839 may not wage war,

except a defensive one. But then, this was no war as Vattel understood the term; not a war waged for the sake of conquest; but a punitory war in Grotius's sense. Before it was undertaken the Powers protested their disinterestedness (nevertheless five valuable astronomical instruments were stolen at Peking for the park of Sanssouci); it was not dictated by the greed of gain; mutual supervision and unity of leadership bridled the selfishness of the states. But experts writing about the Law of Nations were at their wits'end and did not know what to make of this whimsical occurrence. Even the Cabinets themselves did not make a precedent of this punitory undertaking, to which recourse could be had in future when a European state should be guilty of crime. The Cabinets were on the look out for a novel course of action, resulting in more numerous treaties of arbitration.

Was all reform of the Second Law of Nations at an end then? To president Roosevelt this thought was unbearable. Towards the close of 1904 he suggested that a Second Conference should assemble at the Hague. For what purpose? To give fresh countenance to Vattel and to codify fragments of the Law of Nations? Or to realize the ideas of Gladstone and Grotius?

Such meetings had proved useful to prevent wars as early as the days in which the First Law of Nations throve. People used to say: „let us talk the matter over." It was but a household remedy, but it gave

relief. Under the Grand Pensionary Slingelandt (1727 — 1736) the Hague owed its reputation to the circumstance that it was regarded as the seat of a permanent congress of foreign ambassadors. Accordingly when Kant in 1797 advocated his kindly scheme once more, concerning nations which in future would practice integrity of their own free will, he cites, as a sort of lost ideal, in support of his dream „what happened in the first half of the present century before the States General at the Hague", where — as he thought — the envoys of all Europe made known their differences and grievances, as though they felt themselves to be the organs of a single confederation of nations. This household remedy had often proved efficient; for instance at the Pan-American congresses after 1881 and at the conferences of the inter-parliamentary union; before long it was to be dispensed among the leaders of England and France. A broken leg is not healed by a silk stocking, says the proverb, yet it is with this household remedy that Roosevelt proposed to cure the desperately diseased body of Europe. He seemed to think it of primary importance for nations to meet periodically and to discuss their affairs quietly. What affairs were discussed was of secondary importance. If the Powers could be induced to assemble regularly, distrust and the lust of conquest, he seemed to believe, would disappear without leaving a trace. The Conference met in 1907 and industriously carried on the work of 1899: codification of fragments of the Law of

Nations together with International Arbitration, which was regarded as a panacea. Europe, afflicted with a mortal tumor and inwardly bleeding to death, was to be doctored with a glass of sugar-and-lukewarm water.

It is difficult to judge the Second Conference as leniently as the first. The world had been taught a lesson in the interval. The Russo-Japanese war had just been fought; the strained relations resulting from the Morocco conflict were just over. Of what use had even the most excellent codification of the Law of Nations, the best arranged arbitration proved to be in these matters? Vattel ruined all. Even binding treaties of arbitration based on Vattel, resolutions of disarmament based on Vattel, international guarantees based on Vattel would have been of no use. For at any moment a sovereign state might cancel these. Vattel's monstrous conception of sovereignty which undermined all the Second Law of Nations, had also undermined the work of the First Conference which was then but eight years old. It had been decreed a duty of all nations which had signed the treaty, to urge all states hat were bent on war to have recourse to arbitration. This article has become a common langhingstock. The rights of war were formulated — but what was the good, seeing that no judge was competent to decide whether they had been adhered to? No one profited by the ambrosial labours of the Conference (which had been making institutions and codifications

which were not sanctioned) except bookmakers who revelled in them.

The Second Conference, instead of revoking those worthless regulations or providing means to enforce them, merely augmented them. The article about urging nations to have recourse to arbitration was not adhered to and the only remedy the Conference could think of was to double its length. Again it was pointed out that there was no umpire, competent to decide whether the laws of warfare-by-land were observed. Germany whose regulations of warfare (Kriegsbrauch) did not correspond with the articles of the Hague, proposed to add that transgressors are bound to pay damages. But a judge to condemn the transgressor and fix the amount of the damages was not appointed; no more than a judge to condemn the non-observance itself. Who would dare to call this tissue of self-deception serious work? What has experience taught us since 1914 about the observance of the laws of war-by-land, which had been guaranteed in this way?

One important improvement was effected by the Conference. For those states which had bound themselves to resort to arbitration, but became recalcitrant and refused to find a compromise when the occasion offered, they made such compromising compulsory. In doing so it showed to be aware of what the Law of Nations needs, viz. a guarantee that its regulations shall not be cynically evaded. But it obtained this guarantee only with regard to this single point. Yet

it was adjourned for eight years without showing signs of uneasiness.

And what was the consequence? The chief concern, to bring about the safety of nations and universal peace has not progressed since 1898; the anarchic condition of the world has not changed in the least. The year 1911 brought the scandalous Tripoli business; the states, as good pupils of Vattel, refrained from giving an opinion about what sovereign Italy saw fit to do. This year also brought the strained relations about the new Morocco incident and Europe escaped a general war by the skin of its teeth. In 1911 the Unionist majority of the House of Lords threw out, on grounds of pure British egotism, the bill proposing to institute an international Prize Court at the Hague and to compile a code of the law of war-at-sea, as affecting neutrals. Germany and England jointly laboured for this great end, but the Lords desired that England should keep a free hand for the sake of its paramount power. In 1912 and 1913 there was the hopeless muddle in the Balkans; in 1914 the Albanese intrigues between Italy and Austria. The „unanimous acknowledgement of those principles of right, without which safety, also between Powers and Nations, cannot exist" (the revised treaty of arbitration unctuously repeats the phrase) seemed far off as yet. People continued to build on the mouldering foundations of Vattel. Let every sovereign state judge whether it truly observes the Law of Nations; whether it may hurl a

declaration of war at an other state. In the meantime enthusiasts were in raptures about universal peace, about progress; because the telegraph, the telephone, steam, tourism, the joint protection of birds and the joint fight against phylloxera weld humanity into one whole with the common aim of prosperity and a common culture.

All the time diplomatists kept their eyes fixed on the menacing clouds rising above the horizon. They tried to save what was abandoned by the Second Conference. In 1907 and 1908 four territorial „ententes" were achieved, between Russia and Japan, America and Japan, the States round the North Sea and the States round the Baltic: all these acknowledged that to attack each other's littoral or inland territory would amount to injustice. In 1910 followed the well-meant but insufficiently thought out resolution of the Congress at Washington, urging the states „to unite the navies of the world so as to form a single international fleet to preserve the world's peace." In 1911 president Taft tried to make a treaty of arbitration with England and with France by which war should be debarred. Finally we have to notice the persevering attempts of 1912 — the details of which transpired only gradually during the war — to arrive at a definite agreement by which England and Germany bound themselves to give up indefinitely all plans of an offensive war with regard to each other.

That was the way in which diplomatists were at work,

the true meaning of which, amounting to a disavowal of Vattel's doctrine escaped the students of the Law of Nations who persisted in swearing by codification and arbitration.

Just before the mouldering foundations gave way with a loud crash, the world experienced one more courage-inspiring moment produced by the bold endeavour to lay the ideas of August 1898 once more before the states in a new shape. It happened when in March 1913 Wilson became president of the United States and Bryan, his secretary of state, produced his Peace Plan. In practice the use of this Peace Plan is in its design to institute a reconciliation-committee (commission of investigation and report) between any combination of two states on earth, which *must* be heard (unless arbitration has already decided the dispute) before the two resort to force of arms, and during whose inquiry — provided it is not protracted beyond a year) they may not resort to arms. It is of greater significance, however, in the evolution of the Second Law of Nations, for it clearly implies that the states which have signed the treaty are guilty of injustice, of crime, in case they suddenly attack one another; that a declaration of war is criminal so long as an umpire or the committee of reconciliation is studying a quarrel between states and that *every* quarrel *must* necessarily be in the hands of such an umpire or committee of reconciliation. And it was gratifying

to find that Bryan had made a lucky hit and that the Powers were not averse from reform. France, England and Italy signed at once; Russia, Austria and Germany agreed to the principle; Holland signed after Minister Loudon had first radically improved the text. It was expected that all those Powers would, later on, conclude such Bryan treaties not only with America, but also among themselves.

It was not to be. On Monday, August 3rd 1914 at a quarter to seven at night, the authorities at Paris opened the Berlin telegram, containing the declaration of war. On Tuesday, August 4th at breakfast, everyone knew that Vattel's Law of Nations had become bankrupt. Not *the* Law of Nations, not *all* Law of Nations, but this misshapen conglomeration o hypocrisy and cynicism, of whining about immutable duties of States and of indulgence about every sin of which a state was guilty. What Grotius and Gladstone, the Czar und Bryan could not effect, what all the menacing episode till 1914 could not effect, was brought about by one blow in August 1914; the scales fell from all eyes, the rottenness of Vattel's product was exhibited to all the world, the Law of Nations which had been triumphant for a century and a half was smashed to bits.

Then, when people found that war and alliances are criminal and that mankind was praying to be protected from these devastating crimes, they realized that Grotius's Law of Nations offered such protection. Grotius's Law of Nations with those few additions

which have become both possible and necessary, because three centuries of activity and progress divide 1625 from 1914.

It is a tardy success, to be sure, when an author has to wait three hundred years to have his words believed and their truth acknowledged. Probably Grotius himself would have judged more leniently. Probably he would have learned from Ecclesiastes „Cast thy bread upon the waters: for thou thalt find it after many days."

THE HOUR OF GROTIUS.

> Et vous di', Messieurs, encores, et le di' si hault, que je suis content que non seulement eus, mais aussi que toute l'Europe l'entende: Maintenez vostre union, gardez vostre union: mais faictes, faictes, Messieurs, que ce ne soit pas de parolles, ni par escrit, mais qu'en effect vous exécutiez ce que porte vostre trousseau des fiesches liez d'un seul lien que vous portez en vostre seau.
>
> Guillaume d'Orange, Apologie.

In what way has Grotius's spirit become manifest since August 1914?

First of all in the mental attitude of neutrals. The Second Law of Nations had crammed into them that war is a thing with which neutrals are not concerned; that it is a fight in which they are not to take sides; that their duty is to look on in perfect inactivity, „une inaction entière". On this basis the treaties of neutrality were drawn up at the Hague in 1907, treaties *which are still binding*. Holland, Sweden, Norway, Denmark, Switzerland, Spain and all the other countries which remained neutral were therefore *obliged* to conform to these rules. But to Grotius's Law of Nations they are an abomination. He regards (1604, 1625) war on the one hand as a crime, committed by the country which sets it ablaze; on the other hand as a punishment inflicted by the country which, by sheer force, makes the criminal state understand reason. If

it may be, even states which are not involved in the quarrel should, acording to Grotius, participate in inflicting that punishment, though they should have to make sacrifices in so doing. If this cannot be, they should, at any rate, favour the inflicter, but the criminal never. Grotius, therefore, nowhere uses the *words* „neutral" or „neutrality" (though they had been invented and were used in his days), for with the *things* they represent, he will have nothing to do; „outsiders", „interlying states" are the only terms he applies to those countries which are not concerned in the war. The herd of copyists, therefore, (unfortunately headed by Hübner) asserts that Grotius did not yet conceive neutrality, that cornerstone of the Law of Nations; which ignorance darkly contrasts with their own clear insight; the poor wretches are not even aware how painfully they reveal their misapprehension of Grotius's system.

Well then, what was an abomination to Grotius, has become an abomination to millions in belligerent and neutral countries during the present war. They say with president Wilson that neutrality in a war like the present is intolerable; with the Brazilian Barbosa they say that the present deaf-mute and frigid neutrality must yield up its place to a new sort of neutrality which feels and judges. Why? Because they deeply feel that to kindle a war (putting aside the question which side was responsible in 1914) is criminal;' that it is the greatest crime which a state may per-

petrate; and because they regard the war waged by the adversary as a punishment. They reproach governments which conform to the rules of neutrality of the Second Law of Nations with unmanliness and the lack of insight into the new era. If they are answered that those governments *have* to adhere to them, *because these rules are laid down in the binding treaties of 1907*, they only reply that those treaties should be replaced by a new Law of Nations the sooner the better; by a Law of Nations which suits the conscience of present-day humanity.

It is impossible to draw an inference from these phenomena, because no one can determine which of the prevalent opinions is right. A disinterested, reliable power, deciding whether crime is really embodied in one warring group and punishment in the other, is lacking; and also an objective criterion by which to recognize the crime of aggression, is wanting. Erasmus already knew that we cannot take the word of the belligerents themselves when they pretend to represent light in the darkness; and on this head Grotius has no doubt.

The offensive and defensive alliances are the second point which has to be considered. The Second Law of Nations considers sovereign states to be perfectly entitled to form these; in a moral sense even obliged to, if these alliances prove necessary to realize the „right to self-preservation". They are, however, an eye-sore to Grotius's Law of Nations, for such alliances only

bind states on account of their common interests of the moment and do not distinguish between right and wrong. Well then, what was an eye-sore to Grotius has become an eye-sore to millions of citizens of neutral and belligerent countries. Why? Because they too apprehend now that this sort of alliances compels nations to sustain their ally even when he commits the worst crime which a state can commit, viz. the crime of assailing other nations. In the struggle against injustice, they feel, it is desirable for alle nations to support each other; in the struggle against justice not a single one must support the miscreant and an alliance which makes this imperative, is fatal and immoral.

Again it is impossible to draw an inference. Only when it shall be possible to form an impartial, reliable judgment, (based on the recognition of an objective criterion), deciding who is fighting for right and who for wrong, not in appearance, but indeed, and without admixture of greed and egotism — only then it will be feasible to replace offensive and defensive alliances by a league of all nations, safeguarding against crimes committed by all states whichsoever. It is self-evident that we cannot take the word of the ally itself, which shirks the regulations of its treaty of alliance, and adduces only noble motives to justify its breach of faith. But Grotius's fundamental thoughts with regard to this point have become incarnate in millions of citizens, in spite of all diplomacy.

It is superfluous to discuss further points, for the same remarks apply to all. When in January 1691 the king-stadtholder, William the Third crossed over from England to urge the great Conference of States at the Hague, to combine against the criminal state of those days, the France of Louis the Fourteenth, he regarded his work not as mere fighting, but as a war which punishes crime, a just and pious war, a war in Grotius's sense. When on March 13th 1815 the Powers at Vienna proclaimed Napoleon who had just escaped from Elba to be a „perturbateur du repos du monde", an outlaw who had to be hunted down by all, — they felt their work of Waterloo to be a war of punishment, a just war, a war in Grotius's sense. When as early as 1911 and in February 1914 Sir Edward Grey asserted that in a new Law of Nations all the states, led by motives of unsuspicious purity, should assemble, as often as a criminal state kindles a war, in order to stamp it out, as fire in a house or a wood, or as a pestilence is stamped out, then it was a Grotius war which he had in his eye. When in August 1913 Carnegie, delivering a speech in the Peace Palace spoke in favour of forming a league against any state which sooner or later might disturb the world's peace by an egotistical war, he too, regarded coercion as did Grotius. All these men saw what at present all the world sees. To all such cases we may apply Groti us's words at the beginning of his argument about the conduct of warfare (his third book): that the punisher

must not be hampered but that all possible means may be used against the criminal state, by which it may be subdued—provided the punisher observes the laws of humanity, which Grotius carefully collects and specifies for the purpose. Anything may be done at sea, by land, anything that may be effected by pressure on „neutrals". No question of reducing the right of blockade! The punisher may even blockade right across an interlying state. Limit the seizure of contraband to arms and ammunition? Grotius will not hear of such a thing. The punisher may keep back anything, the importation of which might help the criminal to hold out. If by doing so even innocent countries should suffer, they may be consoled by the reflection that for them, too, quelling criminality among states is the principal thing. He who abets or supports the resistance of a criminal state from weakness of character or compassion, acts as unwarrantably as he who from the same causes helps a rogue out of a place of refuge or a scoundrel to escape from the police.

This appreciation of war is valuable. Nothing could be more disheartening than the discovery that the war of 1914 should present the same aspect as the wars of one or two centuries back. If this should prove to be the case what could then give us the courage to hope that things will be different a hundred or two hundred years hence? The very fact that all over the world (by no means in belligerent countries only) this war is regarded as a struggle between crime and

punishment, gives a hopeful outlook on the future.

And yet the revulsion of feeling is not represented by this idea of punishing criminality of states alone. There is one doctrine which causes Vattel to be no longer satisfactory to modern opinion and Grotius to be perfectly satisfactory. This doctrine is that the worst crime a state can perpetrate, is to force a war on another state out of self-interest, out of a desire to secure paramount power. Only by the war of 1914 millions have become conscious of this very elementary fact. Only by the war of 1914 Grotius's conception has become real and alive, it has become our very own business. The one central idea of Vattel's Law of Nations which explains its fiasco is that the sovereign state is practically absolutely free to hurl a war at any time, for any reason and at whomsoever its sovereign, irresponsible judgment desires to do so; „ces Princes pouvoient avoir de sages et justes raisons d'en user ainsi et cela suffit au Tribunal du Droit des Gens". But the central idea of the world since 1914 is just the reverse: by their doctrine of duties it is strictly forbidden even to sovereign states to hurl a war at any time, for any reason and at whomsoever they please; and all the world assumes the right to judge and, if it can, to punish such deeds. Under the Second Law of Nations Kiao-chow, the Boer War, Tripoli were perhaps highly censurable, but they were in perfect conformity with the sovereignty of states as interpreted by the Law of Nations. Now that Grotius's hour

has come, they are considered exemplary crimes.

Grotius's glory has shifted its ground. What the seventeenth and eighteenth centuries so much admired in his writings: his natural law, his theory of criminal law, his quotations from the Bible, the classic authors and the Fathers — is indifferent to the twentieth century. But the events of August 1914 have raked up out of the embers some sparks of the fire that blazes in the works of 1604 and 1625 and has since remained their deeply christian glow which even now warms us.

The war has even provided us with two piquant postscripta.

The first is concerned with ambassadors. Ambassadors of the sort to which d'Avaux and d'Estrades belonged had been considered more noxious than beneficent to the peace of Europe by Grotius, but the first Law of Nations desired permanent embassies and the Second confirmed them. Occasional missions, after the heart of Grotius, were relegated to the use of secondary affairs and were not even mentioned in the Law of Nations any longer. Hardly has the world-war begun, however, when a number of large nations (not actuated by rivalry or the desire to spy, but by the honest desire to co-operate) seek to come into contact again by means of temporary missions and delegations bearing new names.

The other item is concerned with „the open sea". The Second Law of Nations had crammed into people

— and the treaties express as much — that in the customary war, waged for the sake of fighting, neutral commerce may only be impeded on account of one of three reasons: on account of breach of a lawful blockade at sea; on account of transporting contraband by sea; and on account of breach of neutrality by giving aid at sea. A „desideratum" of the Second Peace Conference of 1907 went farther still in this direction: commercial and industrial intercourse between belligerents and neutrals — it said — should be very specially protected. Not only has all this (being a residue of treaties dating from the First Law of Nations) nothing to do with the „Open Sea" which Grotius advocated and enforced, — *his* „Open Sea" only means that a state may not claim the sea as its own nor monopolize peaceful sea traffic — but all this is even in flat defiance of the principle of Grotius's punitory war. When in April 1599 the Netherlands attempt to overcome Spanish militarism whose leaders evidently will not rest „till all have bowed their necks under the Spanish yoke", they resolve, authorized by Barneveldt himself, (the republic being only twenty years old) to blockade Spain by sea and even by land, cutting off all trade; and however angry seafaring nations may be at this, Grotius warmly applauds the measure and even intends the document of 1599 to be an appendix of the very book of 1604 (which was never printed) of which his „Mare liberum" of 1609 is but a detached chapter. He only objects, as we

may conclude from his letter dated from Paris, April 1629, to the punishment preventing trade between the „interlying states" themselves, trade of neutrals with neutrals or of neutrals with their own oversea factories.

Grotius's ideas are becoming household words; they answer what are felt to be the requirements of a new era: they provide a shepherd for the untended flock. And yet....

A hundred years after Grotius lives Bynkershoek, Cornelis Van Bynkershoek, president of the High Council of Holland and Zealand, known throughout the Seven Provinces (like Jeannin in France under Henry IV) as „the president". The president is a brilliantly clever, but troublesome fellow; his mind is as keen as a lancet; he is a man who always knows all things better than others, not only in his own estimation, but in fact. This fretting genius, however, is not exempt from the customary flaw of fretting geniuses. He cannot appreciate new conceptions anymore than he can make a system of his own. When in 1737 he is dissecting some ten questions concerning the Law of Nations, he immediately seizes upon the weak spot in Grotius's theory, cuts it out and replaces it by a serviceable insertion of his own. Grotius's fame on earth far surpasses Bynkershoek's; but among men of genius and taste who have read both authors, not among the herd of copyists, of course, which ignorantly joins in the chorus of praise, there are those who

maintain that though Grotius undoubtedly had many merits, Bynkershoek was far superior, a man of an exceptionally gifted mind.

What is this weak spot? It was repeatedly indicated above. Grotius himself knew it but too well. The righteous war subdues injustice and crime, but where is the impartial umpire to decide whether crime has been committed and by which country? For it is not discreet to depend on the vehement asseverations of the opponent. The righteous war is waged to redress the balance of justice and to punish; but who can guarantee that the punisher is truly disinterested and who is to superintend the execution of this punishment? For again it is indiscreet to depend on the assertions of integrity and noblemindedness of the opponents themselves. There can only be question of a righteous war when some deed of injustice has been done, some crime has been committed definitely, but if that was the case it may be called a righteous war at once; but by what standard are we to judge, if the moment of definite certainty has come? For the fear of those who believe themselves to be menaced is a deceiving guide.

Now what does Bynkershoek do? He takes up Grotius's rules about the duties of interlying states (neutrals) or about contraband and applies them to the needs of his own time, the time of the First Law of Nations. Then his keen intellect goes on to prove that these rules lead into a blind alley, as objective

tests are lacking on all hands. He gives practical rules fitting his own day instead. But he forgets that Grotius was treating of punitory warfare and himself of the ordinary present-day warfare for the sake of conquest.

Bynkershoek's criticism would not have disconcerted Grotius, who saw very well, both in 1604 and in 1625, how ill his doctrine concerning the duties of states was adapted to the practice of his time. He himself points out a case in which an undeniable crime was committed. A state set out to administer justice from the purest of motives, but during the war „increase of appetite grew by what it fed on" and the original disinterestedness was tainted later on by an admixture of selfishness. May such a war still be called a righteous one and does it affect the judicial consequences? Again he is fully aware of the fact how fatally prejudicial to his system is the inequality of might among nations.

But in this Grotius's self-control is revealed. The facile fancy of thinkers living before and after him, surveying the imperfections of the order of European states, has conjured up a new Europe. But Grotius never dreamt of doing such a thing. As an impartial umpire is wanting is his days to decide the question whether crime has been committed by a state, and, if so, by which (nor do Grotius's six lines about the Christian Governments assembled in council, propose to institute the office of such an umpire) — he conti-

nually repeats his advice: be abstemious, tolerant, meek; do not too rashly conclude that crime has been perpetrated; do not attack the criminal state before you are fully convinced, but if you are, attack it with might and main. As in his days no guarantee could be found for the disinterestedness of the punisher and his mode of proceeding, Grotius does not venture to consider that punishment a duty; he strongly recommends it to those who feel called upon to inflict it, but seems to regard it as obligatory only in case all christendom should be imperilled and devotes a third part of his book to those rules of disinterestedness and humanity, by which not every belligerent, but the punisher should be guided. And as, again, in Grotius's days it was impossible to objectively determine the initial stage of crime, he emphatically says, that fear of being attacked or menaced is no justifying motive. Grotius therefore acknowledges the three imperfections, tries to meet them by sound advice; but he can, no more than Bynkershoek or anyone else in those centuries, make those evils disappear. His book details the Doctrine of Duties which as he is firmly convinced truly binds the states; not the more perfect law. cemented by world organization, which may possibly obtain in an advanced system of states. He limits himself to assert his Doctrine of Duties by means of the spoken and the written word, for farther than that he cannot proceed in 1625. Will 1920 be able to achieve what was impossible to 1625?

In a few very important respects our time has an advantage of Grotius's. To begin with the earth at present is completely controlled; it is not only divided and ordered politically (which was effected but some few decades ago) but it has become a whole which may be manipulated as such by means of steam-locomotion, the telegraph and technical application of force. Again there are at present international boards, law-courts, committees of unions, etc., which being composed of private citizens and not of representatives of the different states, can decide independently and impartially between and about nations. Lastly, resulting from these two advantages, it is now possible to form international organs and organizations in which the world acknowledges its will to be represented and its strength to be embodied.

But such contingencies are not of much use. There is a wide chasm between what is possible and what is probable. And what about probability in these matters?

The first imperfection of Grotius's system was the lack of an impartial umpire, sitting in judgment on deeds of injustice or crime committed by states. The International Prize Court of the Second Peace Conference — destroyed by the opposition of the Lords in 1911 — the projected Prize-Court at the Hague furnishes the tangible proof that such impartiality is practically and technically possible. For one of the functions of that court, projected by England in co-

operation with Germany and approved by nearly all states, was to have been, to decide whether a capture had perhaps been made in violation of some binding treaty, or in violation of neutral territorial water. A law-court made up of private citizens sitting thus in judgment on a Sovereign state — it amounts to blasphemy against Vattel! But the year 1907 ventured upon it. Consequently a law-court can be constituted in the same way by and for all states of the earth, consisting of men denationalized or supranationalized for their work, to whom also presumptive crime of states is submitted: a „Lusitania"-affair, a „Tubantia "-affair, angariation of ships, even (and especially) the question of an offensive war itself. But the directions by which the cases are tested should be clear and positive. Not only would the present system of states be considerably enriched by an international disinterested body which the world lacks, but the impartiality which Grotius's Christian Governments assembled in council, cannot possibly practice, would be realized.

The want of an unbiased punisher, duly supervised, was the second imperfection of Grotius's system. In this case the punitory expedition of 1900 against China furnishes the model. What happened there on a small scale may be repeated on a large one: the formidable association of armies after 1914 has proved this. The Second Peace Conference was absolutely silent about 1900; a conference for the Third Law of Nations will refer to it continually. And just as the signal to march

may not be given by foreign offices, instigated by national interests, but exclusively by a competent international law-court, so the direction of the campaign and all the preliminary organization should rest with international authorities, appointed by and for all the states of the world, boards of generals and admirals, men denationalized for their work. Also the directions whose infringement deserves chastisement, should be clear and positive; no vague mandate to „maintain the world's peace" of all things! Offensive and defensive alliances will have to disapperar. Neutralization of specific states will be cancelled, for an offensive war is forbidden to all and help in defending a nation's territory is guaranteed to all. The „League to enforce Peace" projected at Philadelphia in 1915 when America was still neutral, is doing good work in propagating the new idea that the defenceless period of the Law of Nations should now have an end. It is incontestable that, if this League of Nations is to be of service to the Third Law of Nations, it should not as in 1691, 1780 (armed neutrality) and 1815 be directed against individual nations, but for the weal of all, against any state which should perpetrate crime; and it is equally incontestable that armies and navies will not remain pent up within their national territories in future. Though German troops will not, of course, be sent to London forthwith, nor English troops to Berlin, yet international organization can only become effective in this matter, if national

armies and navies only partly remain at home and are supplemented by a good many men and materials from foreign countries.

The third imperfection of Grotius's system was the lack of a definite criterion by which an offensive war may be known. Als late as 1912 the British-German conciliatory overtures had to be relinquished because of the vagueness of the projected terms (distrusted by either party) such as the promise „not to wage an unprovoked war" not to take part in a war „forced on a nation". Bryan's formula of 1913 is a treasure trove. Under the operation of a Bryan treaty, the umpire would only have to ascertain whether a dispute had been submitted to the commission of reconciliation and whether 365 days had elapsed; if not, the crime of the assailant is made out, nobody may assist him, everybody should resist him. A war, in which among a single group of allied belligerents there are punishers and criminals, just and unjust states, cannot occur any more under the operation of Bryan treaties.

In this triplet of additions to Grotius's Law of Nations is embodied what in common parlance during these years of was has been denominated a general League of Nations. A formal definition has never been given, but this much is certain that on the one side (negatively) that League of Nations does not propose to form a single world-state with a single world-government and a single world-parliament; not the

„United States of the World" in short; and that on the other hand (positively) it desires to have offensive wars deprecated, and to have that deprecation enforced by the combined forces of all. When in 1914 the war broke out, it found men's minds but partially prepared for ideas concerning organization of the world; only vague notions about the need of international co-operation existed side by side with a strong fear of failure and an predilection for international arbitration reigned supreme. Even among partisans of an organized world there was half-heartedness, timidity, vacillation; people did not dare to face the new state of things; they did not know whether to begin briskly and on a large scale or with small matters and carefully; their faith could not yet remove a mustard-seed. It requires an effort to repress the thought, how much more quickly the ideas would have assumed a definite shape after 1914, if at that time a well-ordered plan for what at present is called a League of Nations, had been ready; how much more easily it would have been for statesmen on either side to specify during the war for what future objects they were fighting; how much more clearly the picture of such a League of Nations would now present itself to the masses.

In June 1914 a Dutch committee of advice made proposals to its government regarding each of the three things which are wanting in Grotius's system; in the first place regarding the appointment at the

Hague of an international judge, competent to ascertain if a state was guilty of crime or injustice (provided the rule infringed should be laid down in a treaty concluded after 1899); in the second place regarding a declaration to the effect that to assail another's territory by force of arms (and also to compel another state by force of arms to do any deed which is not in conformity with the Law of Nations) constitutes such crime or injustice; lastly regarding a definite investigation to determine whether the observance of the Law of Nations, as expressed in treaties, cannot be guaranteed by control of the United Powers, and under the supervision of an international judge. These proposals were sent in towards the end of June; six weeks later Europe was in flames.

ABJURING THE SECOND LAW OF NATIONS

How satisfactory it would be to look for resistance against the advent of the Third Law of Nations only with individual bodies, with the German general staff, Prussian militarism, British navalism, the financiers of Wall Street, or the house of Hohenzollern. But the truth will not approve this representation. It is among the millions that we have to look for the forces which retard the advent of the Third Law of Nations. The coming peace will have to be democratic, just because it cannot be dictated by diplomats of the old school to a world which sincerely desires the League of Nations; neither can it be concluded by diplomats who are ahead of contemporary ideas and desire to secure a lasting peace for a yet purblind and yet unwilling world.

What is the opinion in this matter of the guides of popular opinion, of scholars, members of parliament, retired diplomats and journalists? Since the beginning of the war, Vattelites, advocates of, believers in the unrestrained and unrestrainable sovereign state have flocked by their thousands to the standard of the League of Nations. It is touching to hear them; the success of the cause is almost alarming. But if they are asked if they are *therefore* willing to have their own nation give up the right to declare war and to assail

other states; if they are *therefore* willing to bind (really to bind) their own country to participate in the punishment when some crime is committed by a state towards a nation with which they have nothing to do; if they are *therefore* prepared to assist, if necessary, in bringing about a fusion of national military forces within the jurisdiction of every state — then they betake themselves to subterfuges, reservations and all the back-doors of Vattel; then the enthusiasts want to consult „the circumstances" and the, as yet unforeseen, interests of the moment.

Since the beginning of the war the passion for a comprehensive international judicial power for the different states has increased alarmingly. Every country will be compelled — as is the fashion to say — to lay all its disputes before a judge. Do the deserters acknowledge therefore, that if a state is guilty of injustice or crime the injured state should be competent to cite the injurer against his will before the judge? They at once exclaim that this ceases to be equality; the consequences of such proceedings cannot be foreseen; in doing so one has to consult the circumstances and vital interests of the moment. And what about the judge's decision itself; is that to be compulsory? To that question a German (Pohl) already replied in 1911 in connection with the projected Prize-Ccourt of the Hague: with regard to this the state condemned should be able to consult the circumstances and vital interests.

Since the beginning of the war Bryan's Peace Plan has attained to high honour. Commissions of investigation and report for all non-arbitrable differences are considered to furnish the true solution. We can put aside the fact that the League to enforce peace and others will spoil the beauty of Bryan's solution by substituting for about 950 committees which are foreseen by Bryan's scheme, one grave conciliatory board for all the world. Who will have the courage, however, to complete Bryan's scheme and to decree that an offensive war will be forbidden also after the commission has tendered its report; to decree that it will be forbidden to states which have no quarrel whatsoever (as was the case in the late war with Germany attacking Belgium and France, Japan attacking Germany, Roumania attacking Austria)? It is said this second amplication here proposed, extends beyond the limits of the plan; the first is of such immense bearing that „interests will have to be consulted".

The millions should not forget who kept the Peace Conferences in the wrong track. Practical diplomats have felt — witness their attempts of 1907 and later — that the methods of 1899 and 1907 lead to no results. But a learned committee of the „Institut de droit international" counselled as late as 1911 „proceed by all means on the lines of international arbitration and codification of fragmentary Law of Nations." Advocates of internationalism in the different parliaments and also their inter-parliamentary union called as late

as 1913 for such things as new rules about neutralization, which would have been as worthless as the old rules. Pacifists with their „minimum" programme have ventured to formulate all sorts of plausible demands which were meant to allure the world, but the demand which is the essence of all, the demand to swear off war purposely and emphatically, the demand which, they knew, would scare people, and that other indispensable demand: that national navies and armies should not remain hoarded in their country, but be mixed with those of other nations of the League, those demands have not been heard from Pacifists. Fried's argument, which he is never tired of repeating, that disarmament and the labour to secure world-peace are impossible so long as a definite and stable organization of the relative forces of the different nations has not been secured first, has evidently not penetrated to them. They go on building on the mouldered foundations which have already given way. They attempt to collect all in a single ark: the wolf and the lamb, the cat and the mouse, Grotius and Bynkershoek, Vattel and Kant, advocates of coercion and advocates of liberty; they are afraid of definite proposals by which adherents might be estranged; they are fond of vague watchwords by which many may be united.

At the Diet of Nations, therefore, which will assemble when peace is being concluded or a little earlier or a little later, one of the delegates will come forward like Luther at Worms. And he will say: „What we at-

tempt is foolishness; we are trying to square the circle so long as we are trying to establish peace but hold fast to our right to declare war at will. You all acknowledge that there is danger; you speak of a possible Russian surprise, a German, a British surprise. Now acknowledge that you are a danger yourself. To make your neighbours swear off the anachronous right to make war by surprise, sacrifice your own."

Then some honourable delegate will rise and demonstrate in a neat little discourse, that war as a means to exact our rights has obtained since the days of Pharaoh and Sardanapalus; it has been consecrated by the bible, Homeros, Shakespeare; it gave birth to the heroic spirit. And when he sits down, he will be congratulated by all. Then a second one will point out, in an equally clever speech that the right to declare war at will has been inherent in the Law of Nations of all times. Then a third one will demonstrate from a philosophical-psychological point of view, why the relations and duties of states are radically different from the relations and duties of men. Then a fourth will show that even the gospels and the Sermon on the Mount are only addressed to individual men and that it would be a „methodological" error to presume that they too are opposed to hatred between, let us say, the Jewish and Samaritan peoples. All these excellent arguments, appealing to the old instincts of the assembly, instincts which are not yet dead at all, will provoke noble enthusiasm. And, at last, perhaps, a

delegate of southern temper will jump up, waving his arms, and bawl out that to swear off the right to declare war is ridiculous; that it would be like a girl, posturing with widespread arms on the rails in an attempt to stop an express, a Musonius Rufus, parading his ill-timed wisdom about the value of peace between the ranks of troops drawn up in battle-array.

As you please, gentlemen. But why, then, do you not adhere to Emëric de Vattel; what business have you with Grotius?

Lasting peace is heaving in sight and national parliaments begin to ask themselves, in neutral and belligerent countries, what they, on their part, can do to hasten the advent of the Third Law of Nations. They are beginning to ascertain whether a League of Nations can be reconciled to their constitution.

Of course, no constitution is concerned with a League of Nations. On the contrary. Barring a few articles regarding treaties and war, every constitution is drawn up as if the nation need not mind any power on earth. But this is only a matter of phrasing, of form.

But what do those national constitutions say about the right to declare war and about offensive wars themselves, about licence to commit a crime for the sake of paramount power, about authority to conclude offensive and defensive alliances, to conclude treaties about territory of an alien state (China, Persia, the Portuguese colonies)?

If we limit ourselves to countries which are interesting in this respect — Great Britain has no written constitution — there is but one which really checks arbitrariness in the matter of declaring war, the French one of September 1791, to wit. It says „the French nation renounces the right to wage any war for the sake of conquest and will never use its strength against the liberty of any people"; „in case the legislative body should find that, in hostilities begun by France, a criminal attack (une agression coupable) is involved for which a minister or any other official is responsible, the provoker of the attack will be prosecuted criminally". But that constitution of 1791 was rescinded after a year — it would have agreed very ill with the France of Bonaparte — and from that time there is little to choose between the various constitutions in this respect, though there may be striking differences as to phrasing. The French constitution of 1875 breathes peaceableness, for the right to declare war is mentioned for the first time in the last article about the president and is worded negatively (he „may declare no war, except...."). Also the American constitution is temperate. The Italian one of 1848, which after having touched upon religion, the monarchy and the Chambers of Deputies, at once plunges into the right to declare war, is bloodthirsty. Bloodthirsty, too, is the German one of 1871 which introduces the Kaiser by saying that the King of Prussia, as president of the confederation, bears the

title of German Emperor, that he represents the empire abroad and declares war. Even Switzerland and Belgium, which, according to current opinion, are debarred from the right of waging an aggressive war and of declaring war by their neutralization, even they indulge in the luxury of a lifeless article about declaration of war in the text of their constitution. But the most painful of all is the Dutch constitution of 1887, not because of its article about the declaration of war, which has nothing remarkable, but because of its additional instructions, according to which the Dutch military forces serve to protect „the interests" of the state; a formula from which, if referring to England or Germany, the worst imperialism might be legitimately deduced.

Now what is being contrived to take the sting out of these fatal articles? Nothing that can avail.

Let us consider beforehand what that right to wage war (including licence to commit crime) meant to the laws and the community of states governed by the Second Law of Nations. It literally dislocates all the Law of Nations, inclusive of the treaties. Books about the Law of Nations nowhere acknowledge this. Their love of truth never exposes this all dominating licence to declare war, which upsets all the rest. The prevailing licence to declare war paralyzes even imperative regulations of the Law of Nations. If Holland, in virtue of the injunction of treaties dating from the two

Peace Conferences, should remind bellicose states of the Court of Arbritation at the Hague, at an inopportune moment, it would incur the risk of a war. If Holland in a ticklish dispute with a stronger country should demand arbitration in virtue of the injunction of its general treaty of arbitration with that country, it would run the risk of a declaration of war. Belligerents whose interests require it, can declare war to a neutral country which has strictly adhered to the laws of neutrality, and, inversely a neutral country whose neutrality has been strictly observed may, at any moment that suits it, declare war to one of the belligerents. For those who have learned to regard the Law of Nations in the light of Vattel, these are obvious facts; but which reader of the regulations of treaties and of the Law of Nations is prepared for such operation of the licence to wage war? In consequence of this the relations between states are like those between the citizens of revolutionary Moscow or Petrograd; not only one's life and possessions are in danger, though one observes his duties as a citizen, but it is necessary at times to trample on those duties, in order to save one's life and possessions. This is precisely the curse of anarchy; this is the curse of the licence to declare war as affecting the life of nations.

And what is being planned to obviate this curse? People are trying to formulate articles of constitutions to prevent unnecessary or hasty declarations of war: now they seek a remedy by demanding publicity, now

in co-operation of parliaments. One ought, of course, to find regulations to prevent *every* declaration of war. *Neither* an executive organ, *nor* a legislative body, *nor* a resolution of the people, *nor* any power in the state whichsoever, may declare war or undertake hostilities; for *aggressive war is crime*. The third Law of Nations can only tolerate active warfare to punish deeds which have been acknowledged by an international judge to be crime or injustice — and that under international supervision. Only that is the spirit of Grotius and Bryan; only that is the shibboleth of a sincere love of world-peace and a League of Nations. And better than a „minimum" programme (how long the maximum programme is going to be!), better than Count Czernin's credo of October 1917, better than president Wilson's fourteen points of January 1918 or his four points of July 1918, better than any vague phrase and vague speech is this one definite question: „Are you, sovereign state, prepared to strike out (at the same time with the other Powers) from your constitution the right to declare war, and to describe your military forces in that constitution as being exclusively destined for the protection of violated rights on the basis of world-treaties?" Those who reply to that question: „Yes, I am, with all my heart" desire a League of Nations and enduring peace. Those who answer: „Well, you see, I should like to reply in the affirmative, but my aggressive wars are ever purely defensive, and my sovereign right cannot exist without my sove-

reign sword" — unmasks himself and brands himself; he does not desire lasting peace, but Vattel's lasting anarchy.

Do we, then, propose to abolish war by means of a resolution, a conference, a treaty?

We propose nothing of the sort. We do not mean to abolish war anymore than we abolish theft by assigning it a place in a penal code. Neither do we mean to abolish barracks, conscription, guns. It is hoped, indeed, that in a better ordered world, the very preparation of which has yet to begin, criminal war will be an exception, that co-operation of military forces will act as a preventive, that they will hardly ever be needed, that the burden of armament will be very considerably lightened. It is hoped that reality one day will resemble Kant's picture of harmony somewhat. But all this has nothing to do with what is needful for a League of Nations at present.

A League of Nations requires that the licence of warfare shall be destroyed; that a body shall be organized which renders criminal wars impossible. All war will not disappear in that case (crime *is* simply not to be abolished) but the war for the sake of fighting, which for centuries has been considered normal, will.

And in case nations swear off war and criminal wars are opposed by collective action, have we then attained our end? Is not a great deal left to be organized both in politics and international economics? Does

not Grotius himself enumerate a number of other crimes which states may perpetrate besides wars waged for criminal purposes? How has the ground to be prepared for that harmonious feeling among nations which is to lead to disarmament before long?

Those are questions raised by true-hearted people, who since we are going to break with the devil, would like to see all evils obviated collectively. Fortunately we need not get rid of them with the reply that all things cannot be attended to at once. A satisfactory answer repeatedly presents itself to our minds.

In the existing anarchy of the world all international reform amounts to an affliction. Every proposal, down to the most trifling ones, is regarded from the point of view of national paramountcy, national danger, national defence; and the politician who foresees the greatest number of hazardous consequences is reckoned the most clear-seeing of all. Therefore those who, while cementing the League of Nations would also solve secondary problems would render the task of the moment impracticable. But when the world has lived for some twenty years under a League of Nations and has learned to regard international reform in the same way as national, then — but not before, the time has come for by-work.

Thus it is with regard to the work of warfare. Every one knows that war is waged for very great political ends; but, theoretically speaking, not for those alone. Even in Grotius's Doctrine of Duties, war is called the

ultimate means to secure one's rights. Venezuela does not pay its debt to you. China murders your subjects. Turkey cuts off your trade or tears up your capitulation: if you were strong enough you could go and exact your due by the use of that national force which is called war. The Second Law of Nations eagerly adopted this mode of proceeding; the practice of states adopted it still more eagerly. What about it under the operation of a future League of Nations?

Under the operation of a League of Nations arbitrary war of that sort will be cancelled. If it were left alone, that demon Vattel would at once take up its abode in it again. No state of the League will be suffered arbitrarily to secure its rights. Of course, this prohibition imposes a double duty on the League: first, to provide an international judge, competent to pronounce judgment, whenever the rights of a state are trampled upon; and, secondly, to see to it that, if after such a decision (assignment of right or penalty) coercion should be required, the Powers collectively (be it with a small part only of their total forces, in simple cases) will take such coercion upon themselves. But the League of Nations should decidedly not wait for this double end to be attained; for this order, too, will only be realized when mutual confidence has grown by the existence and the operation of the League itself.

And if again someone should prove that the idea of a League of Nations is hardly compatible with the idea of capitalism; that as capitalism feels only safe with

imperialism, the League of Nations can only thrive in a socialistic community? Let the League of Nations not wait a single day for that either; the advent of a new economical polity will be more accelerated by a League of Nations, which, though imperfect, is existent than by imagined schemes. Surely there is work enough as it is.

But all we have advocated so far, is much too complicated for the multitude. The stormy impulse to create a League of Nations, it is said, should originate with the millions; but who is to make the millions understand Grotius's Doctrine of Duties, Vattel's treason, the czar's delusion and Bryan's find? When the Dutch Bryan-treaty was laid before the Second Chamber in 1916, it turned out that a number of members did not know the difference between this treaty and a treaty of arbitration; nor did they understand the bearing of such a Bryan treaty. If members of parliament are so ignorant what will outsiders be like?

In those quiet, almost forgotten days when the Second Peace Conference at the Hague was chatting in the sunshine about codification, arbitration and presents for the Peace Palace — in those homely days a homely plan ripened, the plan for an Academy of International Law at the Hague. A home for students, diplomats, officers, consuls and journalists from all parts of the world; lectures were to have been delivered there by specialists from all parts of the world. We

should therefore have no longer heard of an American Law of Nations, side by side with a German or a Japanese: by exchange of thought and personal intercourse unity of conception was to have been fostered. The Hague was to become a Mecca for the international study of law, for the study of each other's objections and desires in these matters. And if the war had not intervened, that college, housed in the library-wing of the Peace Palace would have been opened before the end of 1914.

But the war came and now there is no doubt but that the Academy at the Hague would have been stillborn, if it had based its teaching on the Second Law of Nations. The United States whose influence is daily increasing will certainly have nothing more to do with this antiquated stuff; neither will South-America; Japan, which both in its Russian and in its present war observed treaties and the Law of Nations in a way which may serve as a pattern to the old peoples of Europe — Japan can hardly be rapturous about a Law of Nations which only seems to have been written in order to be taught and violated. And wherever on earth woman might get a share of the government, the Second Law of Nations of man will be hated and detested by her warmer and more delicately sensitive heart. The college at the Hague after this war will be the prophet of the Third Law of Nations or it will not be at all.

It will not find it an easy task, however. Books

about the Law of Nations at the present day are permeated by the anarchy of the world, permeated by Vattel. The college at the Hague has therefore to do what customhouse-officers of the belligerent countries did with one's luggage, who literally took out one article after another, examined it, and passed only what was absolutely unsuspicious. That college will, consequently not be at liberty to take the books of copyists and insert a new thought (characteristic of the League of Nations) here and there; on the contrary it will only be allowed to borrow from those books the little which is in accordance with the principles of the Third Law of Nations and is quite certain to be accepted and preserved, as for instance part of consular law, postal law, the law of extradition. All the rest may be burned.

In this way the Law of Nations will change much. It will become a systematic and principled whole, built on the right to try, to police and punish states. It will consist of rules which are guaranteed and adhered to. Its history will no longer be a history of college doctrines, nor a decoction of universal history during the last centuries — but pure history of law, of what, since the 16th century has been acknowledged and adhered to by authoritative governments themselves and what has not been acknowledged and adhered to.

In this roundabout way the Law of Nations can assume a form which renders it intelligible to the masses.

The mistake of all those serious diplomatic endeavours between 1907 and 1914 to, complete what the Second Conference had left undone, was that they preferred the courteous, delusive forms of the second Law of Nations to the hard facts of real life; that they never dared to call a spade a spade. People will now be forced to do so. The third Law of Nations does not only render it possible, but even necessary to formulate the dilemma: shall states remain uncontrolled or not — so clearly, that voters in all countries can reply in the affirmative or the negative. The advent of the Third Law of Nations makes it a duty not to await passively and resignedly what influential men will decree concerning the nations, but among those very millions to disseminate the idea, already now, that aggressive war is crime. If the masses even at the cost of sacrifices wish to see Grotius's Doctrine of Duties provided with the organs it has lacked, then a well-ordered world is assured: if they do not wish or dare to demand those the world will remain a mere pool of humanity.

THE THIRD LAW OF NATIONS.

Of the truth that indeed this swearing off of war must be the starting-point and test of the Third Law of Nations and of a League of Nations, few things can so completely convince us as a bird's-eye view of Grotius's volume of 1625 as a whole. Although it has seemed so far that Grotius's Doctrine of the Duties of States was only applicable to the present and the future, yet an important part of it — about which we have been silent — refers to conditions which, even then, were things of the past. Just because Grotius combines two parts to form one sober, severe structure, it may be rendered so easily.

When Grotius's medieval predecessors spoke about war what were they thinking of? Sometimes of wars like those of Sennacherib, Alexander, Caesar. Sometimes of wars to which the pope summoned all christendom; to which summons many princes replied like Charles VII in 1453: that he had his hands full with managing France. But above all they think of that evil of their own time: the war of one knight with another, of a knight with a prince or a town, of a town with a town, of a prince with a prince, of the White Rose with the Red, of all those teeming wars, in which each judged of his own cause, and which made life within France, within England, within Germany a hell of restlessness. That is what Grotius

throughout his book calls „private" war, intestine war, bellum privatum.

At first these medieval wars filled people with the joy of living, with pleasure. This is, perhaps, easy to understand. Which boy would not much rather read about cudgels and armour than about the staple for wool and about miniatures? In course of time the horrors and the evils become too oppressive for a large number of people; and it is the medieval church which then stems the tide of that torrent, on the one hand by getting more and more persons and places beyond the pale of civil war (its system of „pax"), on the other hand by precluding that war from more and more periods (its system of „treuga"). Until in the sixteenth century civil war itself disgusts all; only abhorrence is felt for it. Mere restrictions will not avail any longer. Quite a new desire arises; it is no longer attempted to ennoble and refine the methods of „private" war, but that form of warfare itself is proscribed. „Private" war may no longer be waged and those that set it ablaze commit a crime. A new, organized power strives with might and main to subdue this crime of „private" war. This new power is called the modern state. It has existed only for a short time when Grotius is born in 1583.

And now for the books of 1604 and 1625. They both contain a sustained parallel between the intestine war, bellum privatum and the foreign war, bellum publicum — but the keystone is wanting.

From foreign war, too, during an endless succession of centuries, pleasure and the joy of living were derived; during those centuries the world would not give up the chance-game and the political emotion derived from that war, in spite of all. Later there comes a time when the horrors and evils also in foreign wars are keenly felt and attempts are made to restrict their number by private agreement, to ameliorate them by military laws and to protect certain persons and regions from them. But here the parallel breaks down. Grotius could condemn war for the sake of paramountcy in his Doctrine of Duties of States, but there was then no vestige of a new power which, in the life of nations itself was to oppose war as being crime. The coercive apparatus of a League of Nations was wanting in 1625. It was wanting when he died. It was wanting in the days of Slingelandt, Kant, Gladstone, the Peace Conferences and in August 1914. International war was „ennobled" and „refined" by the First and Second Law of Nations, but not stopped.

Who will *now* dare to give utterance in the name of the world, of each of its five enormous parts, to its abhorrence of foreign, international war, of each aggressive war which one country wages with another?

When the Europe of the Eighty Years' and the Thirty Years' War was but half civilized, it was given the New Doctrine of Duties by one who was called a

prodigy of erudition. Now that the world is sick with a surfeit of civilization, the new Doctrine of Duty is held up before it by an illiterate preacher of penitence from the „veldt", by Christian de Wet. In him is yet unhealed the wound of 1899, when Chamberlain began to close in upon the Boer-nation, which did the Britishers no harm. Fifteen years later, in 1914, South Africa is going to commit a like crime in German South-West Africa. De Wet cannot bear this. He knows that he will be accused of high treason, he knows that the Government is stronger than he — but rises up. He rises up and utters the deep faith that is in him: faith and leaven of the future — in those few, simple words of Steenbokfontein. Your attack on a people that does you no harm, however much extenuated is godless; your attack on a people that does you no harm, however successful, brings down God's curse upon you.

On the principle contained in De Wet's words, the millions should base their conduct. They may become for the League of Nations what its Declaration of Independence was to young America.

Grotius's Law of Nations stands at the door, and it knocks. For three hundred years we have let it knock. Now it is getting too strong for us. We have not yet turned the key, but the bolts have been drawn.

APPENDIX.

Notice.

Notice is hereby given to all burghers of the Union that inasmuch as the Government of the Union has resolved to conquer German South-West Africa and has induced the Members of Parliament of the South-African Party by incorrect intelligence and assertions to ratify this decision of the Government, and inasmuch as there have been protests against this impious attack on German South-West Africa, against a nation which has never done us any harm but has always been kindly disposed towards us,

And inasmuch as the Government has deprived the public of the means to keep protesting in a peaceful way by proclaiming martial law and the regulations,

We keep protesting, arms in hand, against so dangerous a principle which the Government, against the inclination and the will of the Nation desires to carry into execution, convinced as we are that our Nation will be plunged in the greatest misery and disaster and that God's curse will light upon us.

As we, although protesting, do not mean to shed the blood of our brethren, but rather, as has been proved already, mean to prevent bloodshed, if possible, and under no circumstance intend to act aggressively,

We finally appeal to all burghers to exert their

utmost strength to prevent the conquest of German South-West Africa and to refuse at the same time to be used by the Government to fight us with arms,

As we only purpose to conduce to the glory of God and the weal of our Nation and Country.

C. R. DE WET
C. F. BEIJERS.
Generals of the protesting Burghers.

Steenbokfontein. Oct. 28th 1914.

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